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LOK SABHA DEBATES

[Part I—Questions and Answers]

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CONTENTS

Volume III—From 20th April to 7th May, 1955 — *Columns*

Wednesday, 20th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2399, 2401, 2403, 2405, 2409, 2411, 2414 to 2419, 2421 to 2423, 2426, 2427, 2429 to 2436, 2439, 2440, 2442, 2443, 2400, 2404, 2406 and 2413 . . . . . 2461—96

Written Answers to Questions—

Starred Questions Nos. 2407, 2408, 2412, 2420, 2424, 2425, 2428, 2437 and 2441 2497—2500

Unstarred Questions Nos. 909 to 911, 913 to 945 and 947 . . . . . 2500—2520

Friday, 22nd April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2477 to 2483, 2486 to 2488, 2490, 2491, 2493 to 2495, 2498, 2501, 2502, 2504 to 2506, 2508 to 2510, 2512, 2516, 2517 . . 2521—53

Short Notice Question No. 9 . . . . . 2553—59

Written Answers to Questions—

Starred Questions Nos. 2444-2476, 2484, 2485, 2489, 2492, 2499, 2500, 2503, 2507, 2511, 2513-2515, 2518, 2519 . . . . . 2559—80

Unstarred Questions Nos. 948-983, 985-991, 993 . . . . . 2580—2604

Monday, 25th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2521, 2524 to 2526, 2540, 2542, 2544 to 2547, 2550, 2552, 2555 to 2557, 2559, 2562 to 2564, 2541 and 2538 . . . . . 2605—26

Written Answers to Questions—

Starred Questions Nos. 2520, 2522, 2523, 2527 to 2537, 2539, 2543, 2548, 2549, 2551, 2553, 2554, 2560 and 2561. . . . . 2626—36

Unstarred Questions Nos. 994 to 1019 and 1021 to 1043 . . . . . 2637—60

Tuesday, 26th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2565 to 2568, 2570, 2573, 2574, 2577, 2579, 2580, 2582, 2584, 2585, 2587, 2588, 2590 to 2597, 2599, 2602, 2603, 2578 and 2569 . 2661—94

Written Answers to Questions—

Starred Questions Nos. 2571, 2572, 2575, 2576, 2581, 2583, 2589, 2598, 2600, 2601, 2604 . . . . . 2694—98

Unstarred Questions Nos. 1044 to 1057 and 1059 to 1070 . . . 2698—2712

Wednesday, 27th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2605, 2607, 2608, 2610 to 2618, 2620 to 2622, 2624, 2625, 2630, 2632 to 2634, 2638, 2640, 2642, 2645 to 2649, 2651, 2656, 2656-A, 2606, 2628 and 2653 . . . . . 2713—51

Written Answers to Questions—

Starred Questions Nos. 2609, 2619, 2623, 2627, 2629, 2631, 2636, 2637, 2639, 2641, 2643, 2644, 2650, 2652, 2654, 2655 and 2657 . . . . . 2751—57

Unstarred Questions Nos. 1071 to 1104, 1104-A and 1104-B . . 2757—76

Thursday, 28th April, 1955

Oral Answers to Questions—

Starred Questions Nos. 2658 to 2662, 2664, 2667, 2670 to 2672, 2674 to 2677, 2679, 2682 to 2684, 2686, 2687, 2689, 2690, 2690-A, 2691, 2692, 2693-A, 2694, 2696, 2698, 2663, 2666, 2685 and 2669 . . . . . 2777—2815

	Columns
Written Answers to Questions—	
Starred Questions Nos. 2665, 2668, 2673, 2678, 2680, 2681, 2688, 2693, 2695 2607 and 2699	2815—19
Unstarred Questions Nos. 1105 to 1118, 1120 to 1127, 1129 to 1153 and 1153-A.	2819—46
Friday, 29th April, 1955	
Oral Answers to Questions—	
Starred Questions Nos. 2700, 2701, 2703, 2706, 2712, 2713, 2715, 2718, 2722 to 2725, 2709 and 2710	2847—63
Correction of Answer to Starred Question	2863
Starred Question No. 2711	2863—64
Written Answers to Questions-	
Starred Questions Nos. 2702, 2704, 2705, 2707, 2708, 2714, 2720, 2721 and 2726	2864—68
Unstarred Questions Nos. 1154 to 1160, 1162 to 1187	2868—84
Monday, 2nd May, 1955	
Oral Answers to Questions—	
Short Notice Question No. 10	2885—88
Tuesday, 3rd May, 1955	
Oral Answers to Questions—	
Starred Questions Nos. 2728, 2729, 2731 and 2732	2889—94
Written Answers to Questions-	
Starred Questions Nos. 2727 and 2730	2894—96
Unstarred Questions Nos. 1188 to 1194	2896—2900
Wednesday, 4th May, 1955	
Oral Answers to Questions—	
Short Notice Questions Nos. 11 and 12	2901—05
Written Answers to Questions—	
Short Notice Question No. 13	2905—06
Thursday, 5th May, 1955	
Member Sworn	2907
Oral Answers to Questions—	
Short Notice Questions Nos. 14 and 15	2907—14
Written Answers to Questions—	
Short Notice Question No. 16	2914
Saturday, 7th May, 1955	
Oral Answers to Questions—	
Short Notice Questions Nos. 17 and 18	2915—18

LOK SABHA

Tuesday, 3rd May, 1955.

The Lok Sabha met at Half Past Ten of the Clock.

[MR. SPEAKER *in the Chair*]

ORAL ANSWERS TO QUESTIONS

INSPECTION OF EMBASSIES

*2728. **Shri S. C. Samanta:** Will the **Prime Minister** be pleased to lay on the Table of the House a statement showing:

(a) the recommendations made by the official team sent recently for surveying the expenditure of the Indian embassies abroad;

(b) whether any of their recommendations have been accepted and implemented;

(c) the expenditure incurred on them; and

(d) the period of their stay abroad and the names of the countries they visited?

The Deputy Minister of External Affairs (Shri Anil K. Chanda): (a) to (d). A statement is laid on the Table of the House. [*See* Appendix XIII, annexure No. 10.]

Shri S. C. Samanta: May I know the composition of the Inspectorate?

Shri Anil K. Chanda: The last Inspectorate was composed of two Joint Secretaries in our Ministry and one Joint Secretary in the Ministry of Finance.

Shri S. C. Samanta: May I know whether, before this Inspectorate went into the inspection of these Missions, the composition of the Inspectorate was the same?

Shri Anil K. Chanda: Yes, Sir.

Shri S. C. Samanta: May I know whether this Inspectorate dealt with the possibility of better efficiency in the operations of the Missions also?

Shri Anil K. Chanda: The main purpose of this inspection was to advise us with regard to the fixation of foreign allowances, frais equipment, furniture, etc., in the embassies and also to look into the working of the embassies with a view to greater efficiency of the Missions.

Dr. Suresh Chandra: May I know whether the report of the Inspectorate will be laid on the Table of the House, and secondly, whether this Inspectorate reported any extravagance in our Missions abroad?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): The full report is obviously a confidential document. It is not usual to place such documents on the Table of the House. But the paper that has been laid shows their recommendations. As for examining the large number of Missions, instances of some extravagance or a large number of instances about all kinds of things have come. But speaking from memory, I cannot remember any major thing of that kind.

Shri N. M. Lingam: May I know if this Inspectorate has any instructions to look into the report of the Public Accounts Committee with regard to the functioning of these embassies?

Shri Jawaharlal Nehru: The Ministry looks into it and no doubt the Inspectorate goes about it through.

Shri Kelappan: May I know if this report would be available to the Public Accounts Committee?

Shri Jawaharlal Nehru: I should think not, Sir.

PASSPORT OFFICE

***2729. Shri Ramananda Das:** Will the **Prime Minister** be pleased to state:

(a) the number of applications pending with the Regional Passport Office, New Delhi;

(b) whether it is a fact that arrears have accumulated in that office; and

(c) if so, whether Government are taking any steps to clear the arrears?

The Parliamentary Secretary to the Minister of External Affairs (Shri Sadath Ali Khan): (a) At present there are about 500 applications for passports and other services awaiting disposal in the Regional Passport Office, New Delhi.

(b) and (c). Heavy arrears did accumulate in the Delhi office as a result of taking over of the passport work from the States of the Punjab, Rajasthan, Delhi, Uttar Pradesh, PEPSU, Ajmer and Himachal Pradesh. The Government of India have taken the necessary steps to have these arrears cleared within the quickest possible time and it is expected that the work of the office will be up-to-date within this month.

Shri Ramananda Das: May I know whether it is a fact that only those applications were attended to which came through the Travel Agents, brokers and commission agents and direct applications have not been cared for and, if so, whether this is the reason of accumulation of arrears?

Shri Sadath Ali Khan: All applications were attended to without any qualification.

पाकिस्तान में तीर्थ स्थान

***२७२१. श्री रघुनाथ सिंह :** क्या प्रधान मंत्री यह बताने की कृपा करेंगे कि १९५५ में अब तक कितने हिन्दू और सिक्ख यात्री पाकिस्तान के तीर्थ स्थानों की यात्रा करने के लिये गये ?

वैदेशिक-कार्य उपमंत्री (श्री अनिल कु० चन्दा) : १ जनवरी, १९५५ से १६ अप्रैल, १९५५ तक ५७२ तीर्थयात्री पाकिस्तान गये ।

श्री रघुनाथ सिंह : इसमें हिन्दू यात्रियों की संख्या कितनी होगी ?

Shri Anil K. Chanda: There were no Hindus in the figure given here.

श्री रघुनाथ सिंह : हम यह जानना चाहते हैं कि क्या सरकार को ज्ञात है कि पाकिस्तान सरकार साधु विलास आश्रम के टाप् को सांस्कृतिक रूप देने के लिए ले लेना चाहती है ?

प्रधान मंत्री तथा वैदेशिक-कार्य मंत्री (श्री जवाहरलाल नेहरू) : वह उसको ले कर कहां ले जायगी ? वह तो टाप् है, उसको वह कहां ले जायगी ?

श्री रघुनाथ सिंह : पाकिस्तान टाइम्ज में एक समाचार शाया हुआ है, जिससे जाहिर होता है कि पाकिस्तान सरकार आश्रम के टाप् को सांस्कृतिक रूप देना चाहती है ।

Shri Anil K. Chanda: They have denied it.

लंका आप्रवासी अधिनियम

***२७२२. श्री रघुनाथ सिंह :** क्या प्रधान मंत्री यह बताने की कृपा करेंगे कि क्या यह सच है कि लंका की सरकार ने लंका आप्रवासी अधिनियम के संशोधन के सम्बन्ध में भारत की प्रार्थना को ठुकरा दिया है ?

वैदेशि-कार्य उपमंत्री (श्री अनिल कु० चन्दा) : भारत सरकार ने लंका की सरकार को लंका इमीग्रन्टस् एण्ड एमिग्रन्टस् एक्ट १९४८, के संशोधन के लिये बिल पर विचार स्थगित

करने की प्रार्थना की थी, क्योंकि भारत सरकार के विचार से वह बिल जनवरी १९५४, के समझौते के अनुकूल न था। लंका की पार्लियामेंट के दोनों भवनों द्वारा वह बिल अब पास किया जा चुका है और गवर्नर जनरल की स्वीकृति के लिए रुका हुआ है।

Shri Kasliwal: May I know whether the Government of India has expressed that the Ceylon Immigrants Act should not be passed unless and until a register of Indian nationals in Ceylon had been compiled and what replies, if any, have the Government of Ceylon given?

Shri Anil K. Chanda: In our *aide memorie* to the Government of Ceylon we had suggested that before the register of unregistered adults had been prepared, it would not be proper for them to proceed with this Bill. However, they have gone through the Bill and the Bill has been passed by both Houses of the Ceylon Parliament.

Shri Kasliwal: May I know whether the compilation of this register of Indian nationals in Ceylon is continued?

Shri Anil K. Chanda: The register has not yet been compiled.

Shri Joachim Alva: If worse comes to the worst, has our Government got a clear-cut programme by which we could receive and lodge the stateless persons who will be thrown out of Ceylon?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): No. It is not the responsibility of this Government to look after stateless persons.

Shri Kasliwal: When this Bill was under discussion in the Ceylon Parliament, certain allegations were made against the conduct of the Indian High Commissioner in Ceylon, saying that he was obstructing the Indo-Ceylon agreement. May I know how far those allegations are true and may I know whether the Government is in a position to contradict those statements made by the Education Minister of Ceylon in the Ceylon Parliament?

Shri Anil K. Chanda: The allegations are entirely baseless. Our High Commissioner has given every help and co-operation to the Ceylon Government in this regard.

Shri Thanu Pillai: What happens to the Indian nationals who are deported from Ceylon to India and will they be taken care of by the Government of India?

Shri Jawaharlal Nehru: So far as the Indian nationals are concerned, of course such help as we can give is given.

Shri N. M. Lingam: Have the Government of Ceylon called for a conference or have convened a conference of the officials of the Ceylon Government with our High Commissioner's office to discuss this question of stateless persons or rather the registration of Indian nationals and whether our Government has accepted the invitation?

Shri Jawaharlal Nehru: There is no formal conference so far as we know, but our High Commissioner has been just recently invited to come and have a talk with some of the officials there. He has not been told what the agenda is, and we do not know. Naturally he has accepted and he will go and take part in the talks.

WRITTEN ANSWERS TO QUESTIONS

ORGANISATION AND METHODS DIVISION

*2727. **Shri S. N. Das:**
Shrimati Ganga Devi:

Will the **Prime Minister** be pleased to refer to the reply given to starred question No. 1154 on the 21st September, 1954 and state:

(a) whether the working of the Organisation and Methods Division has been reviewed and examined;

(b) if so, the extent to which it has been able to achieve its objective;

(c) whether any report on the working of this Division has been prepared or is proposed to be prepared; and

(d) whether, as a result of the setting up of this division, any officer has been rewarded for efficiency or punished for negligence of duties?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) to (c). A report on the working of the Division for the first year of its existence is placed on the Table of the House. [Placed in the Library. *See* No. S-188/55.]

(d) The control measures introduced in all Ministries and Departments at the instance of the O. & M. Division furnish reliable objective material for gauging the quality of performance by individual officers and staff. This is in its turn reflected in the confidential reports on their work and conduct on which promotions are based. A number of officers whose performance has been shown to be outstanding, have received accelerated promotions to the different grades of the Central Secretariat Service. Persons whose performances were not regarded satisfactory have been passed over although at the time of the initial constitution of the Service they had been graded high.

INDO-PAKISTAN PASSPORTS

***2730. Shri R. P. Garg:** Will the **Prime Minister** be pleased to state:

(a) whether there is any proposal for liberalising the existing passport system between India and Pakistan; and

(b) if so, the broad heads under which the system will be liberalised?

The Deputy Minister of External Affairs (Shri Anil K. Chanda): (a) and (b). This question was recently discussed in Karachi between our Minister for Rehabilitation and the Pakistan Minister for the Interior, and agreement was reached on the principles to be followed for liberalising the present system. This agreement is subject to ratification. A detailed scheme will be prepared and published for general information after the two Governments have ratified the agreement.

INDIANS IN U.K.

1188. Shri Nageshwar Prasad Sinha: Will the **Prime Minister** be pleased to state:

(a) whether it is a fact that Indians between the ages of 18 and 26 and ordinarily resident in Britain are required to serve compulsorily in the forces under the provisions of Britain's National Service Act; and

(b) if so, how many Indians are so affected?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) Liability for military service in the United Kingdom is governed by the British National Service Act of 1948 which applies to all Commonwealth citizens (including Indian nationals) between the ages of 18 and 26 resident in the United Kingdom for not less than 2 years.

The Act does not apply to persons residing in the United Kingdom only for the purpose of attending a course of education or where the circumstances of residence in the United Kingdom are otherwise such as to show that the person is residing there for a temporary purpose only. Since Indian nationals in this age group, resident in the United Kingdom for two years or more, consist preponderantly of students and trainees, the number of Indians liable to be called up for military service is extremely limited.

(b) No figures are available.

वैदेशिक-कार्य मंत्रालय का पुस्तकालय

११९६. **श्री राम शंकर लाल** : क्या प्रधान मंत्री यह बताने की कृपा करेंगे कि :

(क) वैदेशिक-कार्य मंत्रालय के पुस्तकालय में कितने समाचार पत्र आते हैं , और

(ख) इनमें से कितने पत्र समादर प्रतियों (कामप्लीमेंट्री कापी) के रूप में मिल जाते हैं ?

प्रधान मंत्री तथा वैदेशिक-कार्य मंत्री (श्री जवाहरलाल नेहरू) : (क) ६ ।

(ख) कोई नहीं ।

BHUTAN

1190. Shri Krishnacharya Joshi: Will the **Prime Minister** be pleased to state:

(a) the total number of Bhutanese trained in various institutions in India during the year 1954; and

(b) the object of their training?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) and (b). No Bhutanese was trained at any institution in India during the year 1954. At the request of the Bhutan Government three Bhutanese cadets are at present undergoing training at the National Defence Academy, Dehra Dun.

PASSPORT OFFICE

1191. Shri Ramananda Das: Will the **Prime Minister** be pleased to state the reasons for locating the Regional Passport Office, New Delhi in a building in Connaught Place, New Delhi and not in the main Secretariat buildings?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): The Regional Passport Office has been located in Connaught Place, New Delhi, in the interests of the public, as Connaught Place is a central locality and easily accessible from any part of New or Old Delhi. As the Regional Office is not a Secretariat Department it cannot properly be located in the already overcrowded main Secretariat building, apart from such location being less convenient to the general public when compared to a central locality like Connaught Place.

PASSPORTS TO U.K.

1192. Shri Ramananda Das: Will the **Prime Minister** be pleased to state:

(a) the number of passports granted for U.K. by the Regional Passport Officer, New Delhi, since the 1st December, 1954;

(b) how many passports and endorsements were granted on applications received direct since the 1st December, 1954; and

(c) how many endorsements were granted through the travel agencies?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) to (c). The information is not available, as statistics under these separate heads are not maintained.

MINISTRY OF EXTERNAL AFFAIRS

1193. Shrimati Ganga Devi: Will the **Prime Minister** be pleased to state:

(a) the number of Cypher Assistants belonging to the Scheduled Castes in the Ministry of External Affairs in 1948 and in 1955; and

(b) the steps taken by Government to ensure adequate representation of the Scheduled Castes in the Central Cypher Bureau?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) 1948—Nil.
1955—Two.

(b) Recruitment to the Central Cypher Bureau is made on the basis of Intelligence Tests from Assistants, Stenographers, permanent or quasi-permanent Clerks and temporary graduate Clerks working in the Ministry of External Affairs. Tests are

held periodically as and when vacancies occur. To be selected candidates must secure 35 per cent. marks in each of the three subjects prescribed for the Test and 70 per cent. marks in the aggregate.

The Central Cypher Bureau is a Section of the Ministry of External Affairs and full weightage as laid down in the Constitution is given to the Scheduled Castes at the time of initial recruitment to the Ministry as a whole. Such weightage is not possible in respect of each Section in the Ministry. The Government would, of course, like to see a larger number of Scheduled Castes personnel employed in the Central Cypher Bureau and are considering what steps should be taken to secure this result.

BORDER INCIDENTS

1194. Sardar Iqbal Singh: Will the **Prime Minister** be pleased to state:

(a) the number of border incidents that were officially reported during the period from November, 1954 to March, 1955 on the Indo-Pakistan borders of East and West Punjab;

(b) the nature of the incidents; and

(c) the number of such incidents that have been amicably settled between the two Governments?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): (a) to (c). Three incidents on the Punjab (I)—Punjab (P) border were reported during the period from the 1st November, 1954 to the 31st March, 1955.

The first incident related to an exchange of fire which took place between the Pakistan Border Police and the Punjab (I) Armed Police on the 26th November, 1954, when the Pakistan Police attempted to take forcible occupation of Indian territory near the village of Raja Mahtam in Ferozepur district, after crossing the river Sutlej. The Pakistan Border Police, however, withdrew on the 27th November, 1954.

The second incident related to another attempt on the part of the Pakistan Border Police to take forcible occupation of Indian territory, after crossing the river Sutlej, near the village of Lakha Haji in Ferozepur district on the 8th December, 1954. Here also, the Pakistan Border Police withdrew on the intervention of the Punjab (I) Armed Police.

The third incident related to the exchange of fire between the Pakistan Border Police and the Punjab (I) Armed Police on the 20th March, 1955, as a result of the former raising a dispute about a piece of land situated on the border near village Gajjal in Amritsar district and attempting to take forcible occupation of it. The firing, however, ceased on the 22nd March, 1955, when the police forces withdrew from the area, following an agreement between the senior police officers of the two sides to refer the territorial dispute to the higher authorities for an amicable settlement

Vol. IV
3 May, 1955 (Tuesday)

LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

(Vol. IV contains Nos. 46—58)

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CONTENTS [redacted]

COLUMNS

No. 46—FRIDAY, 22ND APRIL, 1955—

Papers laid on the Table—
- The Madras Entertainments Tax (Andhra Amendment) Act, 1955 . . 5977
- The Andhra Requisitioning of Buildings (Amendment) Act, 1955 . . . 5977
- The Andhra Cinemas (Regulation) Act, 1955 5977
- Amendments to Indian Aircraft Rules, 1937, with an Explanatory Note . 5978
- Amendment to Tea Rules, 1954 5978
- Amendment to Estate Duty Rules, 1953 5978
- Declarations of Exemption under Registration of Foreigners Act, 1939 . . 5978—80
- Replies to memoranda of Members *re* Demands for Grants, 1955-56—Railways . 5979

Message from Rajya Sabha 5979

Committee on Private Member's Bills and Resolutions—
- Twenty-seventh Report —Presented 5979

Calling Attention to matter of Urgent Public Importance—
- Strike by army workshop men at Kirkee . . . . 5980—83

Business of the House 5983

Finance Bill—
- Schedules and Clause 1 . . . . . 5983—6005
- Motion to pass, as amended—Adopted . . . 6005—39

Commanders-in-Chief (Change in Designation) Bill—
- Motion to consider—Adopted . . . . . 6040—44
- Clauses 1 to 3 and Schedule 6044
- Passed 6044

State Bank of India Bill—
- Motion to consider—Not concluded. . . . . 6045—46

Committee on Private Member's Bills and Resolutions—
- Twenty-eighth Report—Adopted 6046

Resolution *re* Weights and Measures—Adopted as amended . . . . 6046—73

Resolution *re* Central Agricultural Finance Corporation—Not concluded . . 6073—6106

No. 47—SATURDAY, 23RD APRIL, 1955—

State Bank of India Bill—
- Motion to consider—Not concluded . . . 6107—6241
- Business of the House 6241-42

No. 48—MONDAY, 25TH APRIL, 1955—

Motion for Adjournment—
- Deportation of certain Satyagrahis by Portuguese Authorities . . . .

President's assent to Bills . . . . . .

ection to Committees—
- ElIndian Central Arecanut Committee . . . . . .
- Estimates Committee . . . . . .
- Public Accounts Committee . . . . . .

Motion *re* Association of Members of Rajya Sabha with Public Accounts Committee—
- Adopted . . . . . .

All India Khadi and Village Industries Commission Bill—Introduced . . . .

COL

State Bank of India Bill—
Motion to consider—Adopted . . . . . .
Message from Rajya Sabha . . . . . .

No. 49—TUESDAY, 26TH APRIL, 1955—

Papers laid on the Table—
Notification under Requisitioning and Acquisition of Immovable Property Act . 6401
Report on the First General Elections in India,1951-52-Volume I (General) . 6401
Notifications under Sea Customs Act . . . . . 6401—02

Insurance (Amendment) Bill—
Motion to consider—Adopted . . . . . 6402—114
Clauses 1 and 2 6411
Motion to pass—Adopted 6411

Reserve Bank of India (Amendment) Bill—
Motion to consider—Adopted . . . . . 6411—54
Clauses 1 to 11 . . . . . 6454—62
Motion to pass—Adopted 6462

Indian Railways (Amendment) Bill—
Motion to consider—Adopted . . . . 6462—64
Clauses 1 and 2 6464-65
Motion to pass—Adopted 6465

Hindu Marriage Bill—
Motion to consider—Not concluded . . 6465—6536
Message from Rajya Sabha. . . . 6536

No. 50—WEDNESDAY, 27TH APRIL, 1955—

Committee on Private Member's Bills and Resolutions—
Twenty-ninth Report—Presented 6537
Correction of answer to Starred Question No. 2282 . . . 6537-38

Untouchability (Offences) Bill—
Motion to consider, as reported by Joint Committee—Adopted . . 6538—6639
Clauses . . . . . 6639—76

No. 51—THURSDAY, 28TH APRIL, 1955—

Papers laid on the Table—
Replies to memoranda from Members regarding Demands for Grants (Railways) for 1955-56 6677
Message from Rajya Sabha 6677
Business of the House 6678-79, 6831-34

Untouchability (Offences) Bill—
Clauses 3 to 17 and The Schedule . . 6679—6824
Motion to pass, as amended—Adopted . 6824

Hyderabad Export Duties (Validation) Bill—
Motion to consider—Adopted . . 6825—30
Clauses 1 and 2 6830
Motion to pass—Adopted . . . 6830

No. 52—FRIDAY, 29TH APRIL, 1955—

Message from Rajya Sabha 6833

COLUMN

niversity Grants Commission Bill—

Time for presentation of Report of Joint Committee extended . . . 6833—34

Business of the House . . . . . 683, 686—63

Hindu Marriage Bill, as passed by Rajya Sabha—

Motion to consider—Not concluded . . . . . 6835—56, 6863—690

Committee on Private Member's Bill and Resolutions—

Twenty-eventh and Twenty-Ninth Reports—Adopted . . 6906—07

Indian Adoption of Children Bill—Introduced . . . 6907

Caste Distinctions Removal Bill—

Motion to consider—Negatived . . . . 6908—21

Chartered Accountants (Amendment) Bill—Withdrawn

Motion to consider . . . . . 6921—46

Code of Criminal Procedure (Amendment) Bill (*Amendment of Section* 435)—

Motion to consider—Not concluded . . . . . 6946—60

NO. 53—SATURDAY, 30TH APRIL, 1955—

Papers laid on the Table—

First Report of the Air-India International Corporation . . . 6961

Ministry of Communications Notification No. S.R.O. 589, dated 12-3-55. 6961

Committee on Absence of Members from Sittings of the House—

Ninth Report—Presented 6961-62

Estimates Committee—

Minutes—Presented 6962

Statement *re* Asian-African Conference held at Bandung . . 6972—74

State Bank of India Bill—

Clauses 2 to 53 and 1 . . . . 6974—721

Schedules one to four

Motion to pass, as amended—Adopted . . . . 7218—36

Government Premises (Eviction) Amendment Bill—

Time for presentation of Report of Select Committee—Extended . . 7237—38

NO. 54—MONDAY, 2ND MAY, 1955—

Motion for adjournment—

Labour situation in Kanpur . . 7239—41

Presidents' assent to Bills 7241

Message from Rajya Sabha . . . 7242

Papers laid on the Table—

Balance sheets and Audit Reports etc. of Delhi Road Transport Authority, 1953-54. 7242

Revised Estimates, 1954-55 and Budget Estimates, 1955-56 of Delhi State Electricity Board. 7243

Committee on Petitions—

Fifth Report—Presented 7243

Leave of Absence 7243

Calling Attention to matter of Urgent Public Importance—

Use of Hindi in U. P. S. C. Examinations. . . . . 7244—46

Citizenship Bill—introduced 7246

Indian Tariff (Amendment) Bill—Introduced . . . 7246

Hindu Marriage Bill, as passed by Rajya Sabha—

Motion to consider—Adopted . . . . 7246—7379, 7379—7439

COLUMNS

Companies Bill—
Report of Joint Committee—presented 7379
Business of the House 7439-40

No. 55—TUESDAY, 3RD MAY, 1955—

Papers Laid on the Table—
Public Debt (Compensation Bonds) Rules, 1954 7441
Public Debt (Annuity Certificates) Rules, 1954 7441
Ministry of Finance Notification dated 3-5-55 *re* reductions in import Duties on Cotton textiles . . . . . .
Committee or Subordinate Legislation—
Third Report—Presented 7441-42
Election to Committees—
Indian Central Arecanut Committee 7442
All India Council for Technical Education 7446-47
Statement *re* Reductions in import duties on cotton textiles from U. K. . . . 7442—43
Calling attention to matter of Urgent Public Importance—
Allegations against Working of the Kosi Project. . . . . 7443—46
Hindu Marriage Bill—
Consideration of clauses—Not concluded . . . . . 7447—765
Clauses 2 to 12 . . . . . 7449—765

No. 56—WEDNESDAY, 4TH MAY, 1955—

Motions for adjournment—
Deportation of certain satyagrahis by Portuguese Authorities . . . . . 7657—61
Labour situation in Kanpur . . . . . 7661—65
Papers laid on the Table—
Review of General Agreement on Tariffs and Trade 7665
Statements showing action taken by Government on assurances etc. . . . 7665—67
Annual Report of Commissioner of Scheduled Castes and Scheduled Tribes for period ended 31st December, 1954 7667
Evidence on Companies Bill. 7785
Messages from Rajya Sabha. . . . . 7667—70
Code of Criminal Procedure (Amendment) Bill—
Laid on the Table as returned by Rajya Sabha with amendments 7670
Hindu Marriage Bill, as passed by Rajya Sabha—
Consideration of clauses—Not concluded. . . . . 7670—7785, 7785—791
Clauses 9 to 12 . . . . . 7670—[illegible]
Clauses 13 to 18 . . . . . 7690—7785, 7785—[illegible]
Clauses 19 to 23 . . . . . 7833—[illegible]
Clauses 24 to 28 . . . . . 7865—79

No. 57—THURSDAY, 5TH MAY, 1955—

Calling attention to matter of Urgent Public Importance—
Appointment of a Commission on Hindi . . . . . 7911—[illegible]
Message from Rajya Sabha—
Committee on Assurances— 7913
Second Report—Presented 7913
Correction of answer to Starred Question No. 2435 . . . 7913
Hindu Marriage Bill—
Consideration of clauses—Concluded . . . . . 7913—[illegible]
Clauses 24 to 30 and 1 . . . . . 7913—[illegible]
Motion to pass—Adopted . . . . . 7954—

Columns

Hindu Succession Bill—
Motion *re* Joint Committee—Not concluded . . . . 8006—8110

58—SATURDAY, 7TH MAY, 1955—

Papers laid on the Table—
Replies to Memoranda of Members *re.* Demands for Grants, 1955-56—Railways 8111
Memoranda *re.* points raised during Budget Debate on Irrigation and Power Projects 8111
Statement *re.* progress of action taken on irregularities in Hirakud Project . . 8111-12
Correction of answer to Starred Question No. 1750 8112-13
Statement *re.* Textile Mills in Pondicherry . . . . . 8113—15
Calling attention to matter of Urgent Public Importance—
Unemployment in Central Excise Department . . . . . 8211—17
Representation of the People (Amendment) Bill—Withdrawn . . . . 8117—19
Code of Civil Procedure (Amendment) Bill—Introduced 8112
Indian Coinage (Amendment) Bill—Introduced 8119
Land Customs (Amendment) Bill—Introduced 8120
Business of the House—
Report of Commissioner for Scheduled Castes and Scheduled Tribes . . 8120-21
Hindu Succession Bill—
Motion *re.* Joint Committee—Not concluded. . . 8121—8279
Death of Shri Chinaria 8279-80

7441

LOK SABHA

Tuesday, 3rd May, 1955

The Lok Sabha met at Half-past Ten of the Clock

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

10-39 A.M.

PAPERS LAID ON THE TABLE

PUBLIC DEBT (COMPENSATION BONDS) RULES, 1954, AND PUBLIC DEBT (ANNUITY CERTIFICATES) RULES, 1954

The Minister of Finance (Shri C. D. Deshmukh): I beg to lay on the Table a copy of each of the following papers, under sub-Section (3) of Section 28 of the Public Debt Act, 1944:

(i) The Public Debt (Compensation Bonds) Rules, 1954, published in the Ministry of Finance Notification No. S.R.O. 2754, dated the 18th August, 1954. [*Placed in Library. See* No. S—161/55.]

(ii) The Public Debt (Annuity Certificates) Rules, 1954, published in the Ministry of Finance Notification No. S.R.O. 2840, dated the 25th August, 1954. [*Placed in Library. See* No. S—162/55.]

COMMITTEE ON SUBORDINATE LEGISLATION

THIRD REPORT

Shri S. V. Ramaswamy (Salem): I beg to present the Third Report of the Committee on Subordinate Legislation.

7442

ELECTION TO COMMITTEE

INDIAN CENTRAL ARECANUT COMMITTEE

Mr. Speaker: I have to inform the House that the following Members have been elected to serve on the Indian Centre Arecanut Committee:

(1) Shri A. M. Thomas.
(2) Shri Basanta Kumar Das.
(3) Shri A. K. Gopalan.

STATEMENT *RE*: REDUCTIONS IN IMPORT DUTIES ON COTTON TEXTILES FROM U.K.

The Minister of Finance (Shri C. D. Deshmukh): Sir, I place on the Table of the House a copy of a notification issued today by the Ministry of Finance under Section 23 of the Sea Customs Act making certain reductions in the import duties on cotton textiles. [*Placed in Library. See* No. S—164/55.]

The House will recall that in the Budget of 1953 we raised the duties on cotton textiles to very high levels on revenue considerations. On goods of British manufacture, these duties ranged between 60 and 80 per cent. *ad valorem*. The United Kingdom Government have repeatedly represented to us that our duties are prohibitive and it is a fact that imports of cotton textiles into India have been small in the last two years. In this connection, the United Kingdom Government have also drawn attention to the fact that Indian textiles are subject to no import duty at all in the United Kingdom.

Government have examined the whole problem in close consultation with the leading Millowners' Associations and are satisfied that the reduced duties specified in the Notification will

[Shri C. D. Deshmukh]

cause no damage to the domestic industry. The Millowners' Associations have also accepted this view.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

ALLEGATIONS AGAINST WORKING OF THE KOSI PROJECT

Shri Kasliwal (Kotah-Jhalawar): Sir, under Rule 216, I beg to call the attention of the Minister of Irrigation and Power to the following matter of urgent public importance and I request that he may make a statement thereon:

> "Recent press reports making allegations against the working of the Kosi Project."

The Minister of Planning and Irrigation and Power (Shri Nanda): Sir, with your permission I make a statement regarding the Kosi Project.

My attention has been drawn to some press reports expressing doubts regarding the technical soundness of the Kosi scheme, the eastward swing of the river at Baghjora, the role of public co-operation and the expeditious completion of flood embankments. I have kept the House informed of developments in respect of this scheme from time to time. I have thought it necessary now to apprise the House of the latest position regarding these aspects of the project in question.

It has been alleged that the present Kosi scheme is not technically sound. The scheme drawn up by the Central Water and Power Commission in November, 1953, was the result of detailed and prolonged investigations carried out since 1946. An Advisory Committee including several Chief Engineers and a Hydraulic Research Expert was appointed to scrutinise the project in December, 1953, and they reported that it would provide protection against flood damage for a reasonable period. I sent the Chairman, Central Water and Power Commission and a senior engineer of the Commission to China in the beginning of May, 1954, to study the various flood control measures on the rivers of that country. A careful study for a period of two months, of the flood control measures adopted in that country convinced them that the 1953 Kosi scheme was sound and was consistent with the experience gained on similar rivers in China, and that only a few minor modifications, like increasing the free board of the embankments, were necessary. These have been incorporated in the scheme. We have also consulted eminent foreign experts. Mr. Wang Hu Chang, Chief Engineer in the Ministry of Water Conservancy of China, who visited the Kosi Project area in January, 1955, endorsed the scheme as drawn up. Two American flood control experts, who recently studied the project, have expressed the opinion that the present plan had been devised after careful study by competent engineers and that it appeared to be the best of the several possibilities each of which had certain disadvantages.

In addition to the western and eastern embankments on both sides of the Kosi downstream of the barrage, the scheme provides for earthen banks both on east and west upstream of the barrage stretching to sufficiently high level to prevent inundation by the river. The eastern bank stretches for about 23 miles upstream of the barrage and serves to close a number of spills taking off from the river during high floods. Last year's floods in Kosi were the highest on record for a number of years and resulted in some of the eastern spills being abnormally active. Perhaps this caused some fear among the local people and exaggerated versions appeared even suggesting that the river was going to take a eastward swing, and that the project would become infructuous if the eastern flood bank was not completed and other measures undertaken before the monsoon. The fact is that the engineers had already included in their programme the construction of the eastern flood bank upstream of the barrage, but their main objective was

to ensure accessibility of the barrage site during the monsoon. With regard to the apprehensions of an eastward swing, complete studies have also been conducted on river models at Poona after incorporating the topography as per the latest surveys of the area. Besides the Director, Poona Research Station, the Chief Engineer, Kosi, and the Chief Engineer (Flood Designs) of Central Water and Power Commission, were also present and all the three officers have submitted a unanimous report that there is no danger of any such eastward swing.

The Eastern flood banks above the barrage lie in Nepal and they were not intended to be constructed by public co-operation. Nearly 50 per cent of the work intended to be done as a minimum this year had already been finished by 15th April and it is hoped that the rest will be completed in time.

The Kosi scheme, as drawn up in November, 1953, was expected to be completed in 6 years. Public co-operation was enlisted to speed up the work. Whatever has been achieved through this agency during the current working season is a distinct advance over the progress that would have been possible otherwise. The current year's programme of construction was drawn up by the Project Administration and approved by the Kosi Control Board at its first meeting held on the 2nd December, 1954. The principle of enlisting public co-operation was accepted by the Board at that meeting.

The experiment on public participation in the construction of the Kosi Project has led to gratifying results and has fully justified the faith we have reposed in the people. The principle of co-operative labour through the Panchayats organised under non-official guidance has been operated with success in this field and is bound to yield far-reaching benefits in other fields in course of time. In point of quality the work done on the basis of public co-operation has been greatly commended. It is a point of considerable economic and social significance that the labour co-operative set aside 7½ per cent of their earnings for programmes of community development in the Panchayat areas. The tempo of work through public participation has been progressively rising and as reported on 27th April, 1955, there were 450 shramdanis, 12,025 village co-operatives labour and 7,923 students engaged on the work. The progress on the western embankment is very satisfactory. Regarding, the eastern embankment, because of late start and other reasons the pace was not sufficiently rapid initially but a very substantial improvement has lately occurred even in this sector. We do not find that claims contrary to actual facts were made on behalf of public participation. The organisation and the leadership developed there at various levels will, with the experience and training that have been acquired, be capable of undertaking far bigger responsibilities in the next season thus leading to a great acceleration of the rate of progress and much earlier completion of the project.

I am glad to say that Bihar Government and the Project Administration are making an all-out effort to accomplish the tasks of the season.

Shri Kasliwal: Sir, may I make a request! Now that the Prime Minister is here, may I request that action be taken against those circulating false rumours regarding the work of Kosi Project and trying to sabotage this noble scheme!

Mr. Speaker: We will go to the next item.

ELECTION TO COMMITTEE

All India Council for Technical Education

The Parliamentary Secretary to the Minister of Education (Dr. M. M. Das): I beg to move:

"That in pursuance of Clause (f) of paragraph 3(i) of the Resolution of the Government of India No. F.16—10/44.E.III, dated the 30th November, 1945, as amended, this House do proceed to elect, in

[Dr. M. M. Das]

such manner as the Speaker may direct, two members from amongst themselves to serve on the All India Council for Technical Education."

Mr. Speaker: The question is:

"That in pursuance of Clause (f) of paragraph 3(i) of the Resolution of the Government of India No. F.16—10/44.E.III, dated the 30th November, 1945, as amended, this House do proceed to elect, in such manner as the Speaker may direct, two members from amongst themselves to serve on the All India Council for Technical Education."

The motion was adopted.

Mr. Speaker: I have to inform Members that the following dates have been fixed for receiving nominations and withdrawal of candidatures, and for holding an election, if necessary, in connection with the All India Council for Technical Education:

Date for nomination	*Date for withdrawal*	*Date for election*
4-5-1955	5-5-1955	7-5-1955

The nominations for the Council and the withdrawal of candidatures will be received in the Parliamentary Notice Office up to 4 P.M. on the dates mentioned for the purpose.

The election which will be conducted by means of the single transferable vote, will be held in Committee Room No. 62, First Floor, Parliament House between the hours 11.00 A.M. to 1.30 P.M.

HINDU MARRIAGE BILL—*contd*—

Mr. Speaker: The House will now take up the clause by clause consideration of the Bill to amend and codify the law relating to marriage among Hindus, as passed by the Rajya Sabha. The House knows that in all sixteen hours are allotted for this purpose. A Sub-Committee of the Business Advisory Committee met and it has made further allotments to various clauses, intimation of which has been given to hon. Members by circular last night or this morning. It has been agreed to by the Business Advisory Committee.

We will take up first clauses 2 to 8, and I would suggest to hon. Members that there should be a time-limit in order to enable all the amendments being discussed. Otherwise the result will be that some amendments will have to be put in without any discussion of those amendments.

In respect of the amendments, those hon. Members who wish their amendments to be take up may kindly notify to the Secretary's Table with fifteen minutes from now such of the amendments which would like to be taken up, to all the clauses separately.

Shri N. C. Chatterjee (Hooghly): To all the clauses?

Mr. Speaker: I am taking up clauses 2 to 8, but today the debate will go on in respect of clauses 9 to 12 also. That will make seven hours. So it would be better if amendments to all these clauses, that is 2 to 12 both inclusive, are specified at the Secretary's Table within fifteen minutes, and I shall take them to be move provided they are otherwise in order.

Shri U. M. Trivedi (Chittor): May I make one submission? The timetable that has been given about the discussion of these clauses omits to mention anything about clause 1. There are some amendments to clause 1.

Shri N. C. Chatterjee: One hour may be kept apart for clause 1 and other things.

Shri U. M. Trivedi: That means it will be taken up at the end?

Mr. Speaker: It is always taken at the end.

Shri U. M. Trivedi: But it is not mentioned in this list. It begins from clause 2 and ends with clause 30.

Mr. Speaker: The reason is clear. Such of the amendments as are of no

importance or are of a formal character will be disposed of in the time which will remain at the disposal of the House after these amendments are disposed of.

Do I take it that the House desires to take up the clauses separately or 2 to 8 together?

Shri N. C. Chatterjee: If they are taken separately it would be better, because clause 2 is a definition clause.

Mr. Speaker: That is what I thought. That is why I put the question. But four hours are allotted to them. That means all these clauses have to be finished by about three o'clock. We will not take up clause 2.

Clause 2.—(*Application of Act*)

Shri N. C. Chatterjee: I beg to move:

In page 1, *after* line 20, *add*:

> "Provided that such person being competent to contract within the meaning of S. 11 of the Indian Contract Act, 1872, (No. IX of 1872) makes declaration in the prescribed form and files the same before the prescribed authority declaring that he desires to obtain the benefit of this Act and thereafter he will be governed by the Act."

Clause 2 is headed "Application of Act". You will find that it says that "this Act applies to (a), (b), (c)" and there is an Explanation. I am suggesting a proviso should be added as I have just read.

My suggestion is this. It has been pointed out by the hon. Minister, Mr. Pataskar, that this Bill will not touch the customary divorces which are now prevalent, and I think the hon. Minister was good enough to say that there were customary divorces amongst eighty per cent. of the Hindu community today in India. That menos the position is very peculiar, namely that this Bill really will not be applicable to eighty per cent of the Hindus. They can still marry and still get their divorce and dissolution of the marriage according to their customary laws.

You know, Sir, what is the position. There are certain classes, certain castes who have got their caste customs. I am reading from Mayne's *Hindu Law*. It points out:

> "Widow marriage and divorce are common among the Vallalans of the Palanis, the Maravars, the Kallans, the Pallans, the Malayalis of North Arcot, the Bhat Rajahs, the potters, barbers and tank diggers and many others who are now included in the Scheduled Castes."

A number of examples are given at page 176 of Mayne's *Hindu Law*, edited by Mr. Justice Chandrasekhara Ayyar.

My submission is do not please delude the public and the country outside, and let us not also delude ourselves by calling it a Hindu Marriage Bill. We can understand as men who preach Akhand Hindustan that there should be greater consolidation of the Hindu community by having a uniform law. Let us brush aside the jungle of diversity of laws, this wonderful labyrinth and maze of conflicting customs, one set of people divorcing, another set not divorcing, let us have one steam-roller uniform jurisprudence regulating the life of the entire Hindu community. There is some sense in it. But what is the law that we are promulgating? Do not call it the Hindu Marriage Bill. If you make it a Hindu Marriage Bill, say that you are adopting certain civilised and proper standards which should be applicable to all Hindus. Once you start by saying that it applies to all kinds of Hindus, and in clause 29 (2) you say that all customs, all local customs, all caste customs, all regional customs are kept in tact, what does it mean? I think the hon. Minister is right that at least in his part of the country eighty per cent of the Hindus can still divorce and have dissolution of their marriages and regulate their life without recourse to this measure. It is, therefore, not obligatory. Therefore, what is the point of promulgating a law like this which will be only meant for caste Hindus, that is only Brahmans and

[Shri N. C. Chatterjee]

Kshatriyas and Vaisyas? They will be regulated by this law, but not the general mass of Hindus.

Therefore I am appealing to the hon. Minister and to my friends in the House: if you honestly feel that Manu and Yajnavalkya should not rule us any more, if we honestly feel that this kind of legislation is beneficial for the entire nation and that the Hindu community should be governed by these new standards, then apply it to all and do not make any discrimination. I find in the Minutes of Dissent, one Member of the Upper House has pointed out that among the 80 per cent of India's Hindu population in the so-called lower classes, divorce is recognised and practised.

11 A.M.

Am I to understand that 80 per cent of the people will not be touched by this law? I do not want to injure anybody's feelings. Hinduism absorbed various tribes, not to exterminate them, not to repress them; they did not adopt the American method; they did not adopt the Australian method of completely exterminating other non-Aryan tribes. When they absorbed them, they also had the foresight of respecting local customs and they tolerated even alien customs. If you think that the *dharmashastras* should no longer rule and that this Parliament should enact some kind of a standard to regulate the lives of the people, then, I suggest that it is only proper that since you do not make it obligatory on 80 per cent. of them, you should not also make it obligatory for the remaining 20 per cent. If you say to the 80 per cent., if you say to the 25 crores of human beings that this law shall not be applicable to them, if you say to them that they shall be completely governed by their caste rules, even after this Act is passed, that, they shall be governed by their panchayat, that they shall be governed by their own standards, then I would submit that it is only proper to allow that freedom to the caste Hindus also. If you allow freedom to the Scheduled Caste, if you allow freedom to our so-called Harijan brothers and sisters, if you allow freedom to hundreds of castes who are having this kind of thing—and sometimes very loose promiscuous intercourse is sanctified by this kind of loose and conventional divorces—if you allow these things to continue, then you are not uplifting, you are not really raising their standard; you should try to bring the 80 per cent of the population to a higher cultural level if you honestly feel that this Bill represents a higher standard, a better standard, a more civilised standard, if you honestly feel that this is good having regard to the psychological aspect of the problem, having regard to the social aspect of the problem and having regard to the cardinal principles of equality adumbrated in the Constitution. If you honestly feel that this Bill is directed towards those things, then apply it to each and all. If you like, you can say that in respect of some people, they can be still governed by some kind of cheap expeditious method or local courts. But I am submitting that it will not be right to make a discrimination between the *brahmins*, *kayasths* and *vaishyas* and some classes of *sudras* who are regulated by *dharmashastras* and compel each and all of them to be brought under the sway of this Bill and at the same time leave out compulsory operation of the Bill on 80 per cent of the people. I sumbit that this is not fair and I, therefore, appeal that if you do not make it obligatory for 80 per cent, if you simply give them a chance of coming under this Bill, if you simply give them an opportunity to avail of the benefits of this Act, if you give them an election or option to come under the operation of this Act, then give the same kind of option to all Hindus, and do not make a discrimination between caste Hindus and non-Caste Hindus, between caste Hindus and others who have got this system of customary divorce. Was not this the object of Dr. Ambedkar? If I remember aright, Dr. Ambedkar

passionately pleaded that there should be uniformity. You are having really the enactment of the Hindu Code in splits, in sections, in segments, in fragments. As the hon. Shri Biswas said, you are having it in section and this is the first instalment. What is the principle on which Dr. Ambedkar fought? I would no longer call him "Modern Manu", nor would I call anybody else "Modern Yagyavalkya". We have exchanged bouquets and that is the end of it. I say Dr. Ambedkar wag logical, Dr. Ambedkar was precise, Dr. Ambedkar was consistent, and I am asking Shri Pataskar to be consistent, I am asking Shri Biswas to be consistent and I am asking this House to be consistent. If you honestly feel that there should be uniformity—and uniformity demands that for all sections of the nation—there should be one marriage law, and one divorce law, then have that marriage law and that divorce law for the entire nation. If you have not the courage to make it for the entire nation, for all the citizens of the Republic, if you want to make it for the Hindu community, then have the courage and wisdom to make a uniform law for all sections and classes of Hindu citizens. Otherwise, you simply condemn communalism but you keep up communalism, you keep up casteism, you keep up regionalism, you keep up all the virus from which our society suffers. Brush aside this labyrinth, this maze, this diversity, this jungle of caste customs and have one uniform law. Give the same freedom to all. Do not force it down on the people who believe in the *dharmashastras*, who believe in sacramental marriage. Do not force it down the throats of the people who still consider that a Hindu marriage is an indissoluble union, perpetual union and should be recognised as such.

I would submit that this kind of legislation was promulgated when the Shariat Act was enacted. I have taken it word for word practically from the Kutchi Memon Act. I understand the Muslim community said that it will not allow some Muslims to be governed by special customs and usages, some of which are not in conformity with the traditions and principles of the Muhammedan Law. Therefore, they said "brush aside all these special customs and usages".

If you stand on uniformity, then logically enforce it. If you do not stand for uniformity, and give election or option to 80 per cent or 25 crores of people, if you allow potters, bakers and other people to continue their own caste rules completely unchecked and unmitigated, then give the same facilities to the Caste Hindus who do not want to come under this Bill. If you want to educate, if you want to say that Parliament has the right to enact legislation like this ahead of times in order to force public opinion or educate public opinion or gradually to assimilate all people to a higher standard, then give that right to everybody. You are continually saying that the large mass of the country is behind you in this measure. If that is true, why force it down their throats on the higher castes and say "you must avail yourselves of the opportunity of the blessings of this wonderful measure".

Therefore, I suggest that justice, equity and fairplay demand that there should be no discrimination between those people who are being given the benefit to continue their customary divorces and those who want to be governed still by the *dharmashastras*, those who want to cling rightly or wrongly to that kind of marriage system which has reigned for ages and centuries. I am submitting that that is only right. Otherwise you will simply pass a Caste Hindu Marriage Bill and you will be deluding the country by saying that it is a Hindu Marriage Bill. You will be really making a mockery of this measure; you will be making this Parliament the laughing stock of the world if you do not apply this measure to all, or, if you do not give the same freedom to all. I am passionately pleading for freedom for all—freedom for those who want the option of having customary divorce

[Shri N. C. Chatterjee]

and those who do not want any divorce and want to adhere to the old traditional rules.

Pandit Thakur Das Bhargava (Gurgoan): Having analysed the words and their full implications in the amendment as drafted, I am not accepting it. At the same time I do agree with the previous speaker that the only basis for codification is that we want to have a uniform law for the whole of India. We want that all these customs which have grown up in our society should not be recognised so that one part of the country may not be quite different from the other part as regards rules of law are concerned, so that such customs which have been inconsistent with the Hindu Law may not grow. It was in recognition of this fact that we agreed to the codification of the law. I maintain that codification is of no use if it leaves big loop-holes for the custom to play its part. It was said at one time that custom should be allowed to grow; if it is so there should be no codification at all. The growth of custom is arrested by codification. All the same we agreed to it on the basis that the Hindu Law shall be the same for all. This was the basis.

As you remember when the Hindu Code Bill was being discussed in this House, we enacted certain clauses at that time. The last clause that we enacted was clause 4 which said so far as the question of custom was concerned, custom was of no use and custom will not be allowed to play its part. For instance, I place before you clause 4 which we passed at the time when we originally wanted to enact this Bill. Clause 4 read thus:

> "Save as otherwise expressly provided in this Code any text, rule or interpretation of Hindu law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code."

At that time I put in an amendment before this House and I submitted: "There is another amendment in my name No. 449. I beg to move:

For Clause 4, *substitute* the following.

> 'Any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce.'

This is an antithesis of section 4 and this is only to bring out into ironical relief the place what my hon. friend Dr. Ambedkar wants to give to 'custom' which I personnaly do not approve."

At that time I also placed several other amendments before the House.

In regard to those amendments, I stated that so far as custom was concerned, it should not be allowed to play a role which will even devour the Bill itself. Ultimately it was agreed and it was decided that custom would not be allowed to play that role. If you look at that Code we said in regard to marriage that so far as customs are concerned those customs which allow marriages between persons of prohibited degree relationship or between *sapindas* will not be allowed to play any part. We arrived at such a conclusion at that time.

In regard to divorce also I know that we are adopting a rule which will be a general rule for all Hindus for all classes; at the same time, it will be through courts and courts alone or through some other authority that marriages could be annulled. We even considered panchayats. These divorces should be allowed through some authority. What do I find in this Bill? My difficulty is this. In this Bill, they

say that if any person wants to have a divorce then the custom will be recognised and he shall have a divorce if that is the custom. What are the customs? Something is cooked in some place and a woman is allowed to be divorced. We were very much against these things and therefore, we agreed that so far as the question of divorce is concerned, it should be a unanimous practice for the whole of India. I do not want to place any obstacle in the way of those who want to have recourse to courts etc. I can understand that. You may take it before the panchayat court or any other court but at the same time it should be through the authority of some court; that divorce should be allowed not by a settlement between a man and woman who say 'we have thought it out and we go away from each other' and then she goes to another husband. I do not want this. It is to check this practice that there should be a safeguard. I know that divorce is repugnant to the wishes of many members of the upper classes. But, at the same time we are here to frame rules or laws which are in the best interests of the country. We should not care as to who is happy or who is not happy. For instance even in the Special Marriages Act which we enacted we did not accept that view about some customs which obtain in the South which we regard as incentuous or bad customs. If you want to make a rule then say so and we will regard it as a rule. But at the same time I should say that these customs are obnoxious to the Hindu law and to the rest of India and they should not be continued in this Bill. We have objected to them and got rid of them in the Special Marriages Act. I do not want that sort of thing to come back again by the backdoor. I support Shri N.C. Chatterjee in so far as we want a uniform law for the whole of India. So far as these customs are concerned, they may be excluded.

What was the plea of Dr. Ambedkar? It was that he wanted to bring a uniform rule for the whole of India. After all what is the basis of one nation? If we are not bound by one rule, then it means that we are different people. The only point that I want to emphasise is that in these matters we should not allow custom to come in. If at all custom is of such a universal nature and is harmless and at the same time not opposed to the wishes of all the other people and if it is a judicially recognised custom, why not make it a law? But if it is not there and if you allow such things to be done and you want to drive coach and four of customs into this law I will say it is no marriage law at all. I do not want to accept any law by which any person can do anything. We are practically reaching a stage in the Hindu Law that any person may marry any person and may divorce in any manner he pleases. What is this law? All marriages, in my opinion, lay some sort of obligation upon the person who is marrying but this present Bill, if enacted, takes away all the obligations. The way in which it comes, I must say that I can allow any person to have his choice. You can say that custom shall be the binding rule. But may I ask, are you sincere, to your own ideals? What does it mean? One Law Minister comes and says one thing. Dr. Ambedkar comes and tells us: 'We want to have a uniform law and no custom will be allowed'. Another Law Minister—Shri Biswas—came and three months ago said 'we do not want to have such Customs as are opposed to the marriage of *sapindas* of prohibited degrees' and do not allow custom to affect the Special Marriages Act'. And a third Law Minister comes and says 'all these should also be allowed'. The Government should be committed to some sort of principle and we should know where we stand. What is the use of asking us to have a Hindu Code of this kind? It does not apply to all the Hindus. In clause 2 we say that it is binding on all and in the rest of the clauses we say that it is not binding on all the Hindus. They can have their own customs. My submission is that we should be consistent and logical. Let us do the right thing which will bring about solidarity among the Hindus in India. We should have a law

[Pandit Thakur Das Bhargava]

which will bind all people. What is the use of having so many laws and then saying or proclaiming to the world that we are having one law. Even if you want to placate certain classes of people do not behave in this manner. I also do not want to displease any person. But, at the same time, I am anxious that we should not be guided by this motive that certain persons will be displeased with us if we enact the right law. I know in saying all this I am, perhaps, displeasing some people. But, if I have the courage of my convictions, I should not think what the upper classes think of divorce. If I think that divorce is good for my country, I should say so; if I think that this law alone is good for the country, I should say that we should have this law only and no other custom. We should not be guided by false notions nor ponder to public prejudice out of fear of displeasing such people. I am afraid we are making a law which will do no good for anybody. I, therefore, submit that there is great force in what Mr. Chatterjee has said.

The Minister in the Ministry of Law (Shri Pataskar): Are we discussing clause 2 or other clauses also?

Mr. Speaker: The discussion is on clause 2 only.

Shri Rane (Bhusaval): Sir, I have tabled amendment No. 1, which seeks to delete sub-clause (2) of clause 2.

In page 2, *omit* lines 11 to 15.

In page 2, *omit* lines 11 to 15.

Before I go into the merits of my amendment, I would like to dispose of the arguments that have been advanced by the hon. Members Mr. Chatterjee and Pandit Thakur Das Bhargava. In my opinion, it is a very clever device to oppose the Bill. For the time being, we know that in India the community of Hindus is divided into several castes and sub-castes and groups and sub-groups and there are different customs. You won't find all these customs tallying with one another. This argument would have been well addressed on the saving clause 29. But, anyhow, to oppose the Bill they have come here and put up a very clear device. I do not think that that argument deserves any attention or consideration by the House.

As regards my amendment, it seeks to delete sub-clause (2). In my opinion, the present Bill confers several rights on women and Hindu women in general. They are (1) the right of getting their marriages dissolved as void or voidable, (2) the right of divorce, (3) the right of judicial separation. (4) the right of permanent alimony, (5) the right of custody of children, (6) the right that the husband of the woman cannot marry again during her lifetime and all that. If this clause is retained as it is, in my opinion, the women of the Scheduled Tribes will be deprived of the several rights that have been conferred on Hindu women in general. You know that there are special provisions to project the interests of the Scheduled Tribes and if you read articles 46, 244 and 342 as well as Schedule V of the Constitution, you will find that the Governor or the Rajpramukh can make any Act of Parliament not applicable to the Scheduled Tribes or to the Scheduled Area. I think, as the clause stands, it is unnecessary, as the Governor or the Rajpramukh can make any Act of Parliament not applicable in the interests of the Scheduled Tribes. I, therefore, submit that my amendment is very simple and there is no harm in accepting it.

With these words, I commend my amendment to the House.

Mr. Speaker: I should like to know how many amendments have been tabled to this clause 2. I was just thinking of the limitation of time and most equitable arrangement would, perhaps, be to call upon those who wish to move their amendments rather than call upon Members who wish to catch the eye of the Speaker and carry on a general discussion on clause 2. I am, therefore, enquiring about the names of the people who have tabled amendments and who want to move them so that in calling Members to speak I can specifically locate them with regard to the specific amendments.

An Hon. Member: Is it only clause 2, Sir?

Mr. Speaker: Yes; only clause 2. If any Member wishes to speak, he must first declare the amendment in respect of which he wishes to speak.

Sardar Akarpuri (Gurudaspur): Amendment No. 275, Sir.

Shri U. M. Trivedi: Amendment No. 127, Sir.

Mr. Speaker: I will come to it later: Sardar Akarpuri.

سردار اکرپوری : سبھا پتی جی - میرا اصلاح یہ ہے کہ پیج (۱) میں کلاز نمبر ۲ جو کہ ایلیکشن ایکٹ کے بارے میں ہے اس کی لائن ۱۳ میں جو یہ لکھا ہوا ہے -

(b) to any person who is a Budhist Jaina or Sikh by religion, and

اس میں سے سکھ لفظ کو اومیٹ کر دیا جائے - میں سمجھتا ہوں کہ سیکولر اسٹیٹ میں ہندو - سکھ - مسلمان یا کسی اور جاتی کے نام پر کوئی لا بلانا یا اسے پاس کرنا ہماری سیکولریزم پر ایک بہت بڑا بھاری دھبہ ہے - اس میں سے جو مسلمانوں کو کریشچیئنس کو - پارسیز کو اور جیوز کو اومیٹ کیا گیا ہے اس کو میں ٹھیک نہیں سمجھتا - میں اس میں ایک بات کے سوائے کوئی اور چیز نہیں دیکھتا کہ جو مسلمانوں پر ایپلائی نہ کرتی ہو - مسلمانوں میں چار شادیاں کرنے کی اجازت ہے اور یہی ایک چیز ہے جو ان کے خلاف جاتی ہے - اسی بنا پر اسلام کو اس بل کی پراویزنس سے مستثنیٰ کیا گیا ہے کہ ان کی شرح میں ایک ایسی چیز ہے جس کے مطابق وے چار شادیاں کر سکتے ہیں - لیکن میں عرض کرنا چاہتا ہوں کہ اس میں بھی یہ درج ہے کہ اگر چار شادیاں کرنے کی ضرورت کو محسوس کریں تب ہی وہ چار شادیاں کر سکتے ہیں لیکن اس سے زیادہ نہیں اور یہ ان پر مانڈیٹنگ نہیں ہے کہ وے ضرور چار شادیاں کریں - اسی بنا پر ہم نے ان کو نہیں چھیڑا ہے - میں آپ کو بتانا چاہتا ہوں کہ ہندوؤں میں بھی ایک ایسی چیز ہے - کہ اگر نرینا اولاد پیدا نہ ہو تو بھنڈ کون بھرائیگا - اگر بچہ پیدا نہ ہو اگر لڑکا پیدا نہ ہو تو بھنڈ بھرانے والا کون ہوگا - اس واسطے ہندوؤں کو بھی اس بات کی اجازت ہے کہ وے دوسری شادی یا تیسری شادی یا چوتھی شادی جب تک کہ بچہ پیدا نہ ہو کر سکتے ہیں - یہ چیز ہندو شاستروں کے مطابق ہے - ہندو

[سردار اکرپوری]

ہندو ہیں۔ لیکن بھی ہندو ہیں اور جلتا بھی جو اس کے پیچھے ہے وہ بھی ہندو ہے۔ اس واسطے ان میں پھوٹ ڈالی جائے۔ ان میں فرکشن پیدا کیا جائے۔ اس بل کو وے سنہ ۱۹۳۹ یا ۱۹۴۰ میں لائے تھے۔ ۱۹۴۲ میں کوٹ انڈیا موومینٹ کا نعرہ لگایا گیا اور یہ بل بیچ میں ہی پڑا رہ گیا۔ اس کے بعد ہم نے اس بل کو ایڈاپٹ کر لیا۔ اس بات کی مجھے خوشی ہے کہ ہمارے نیتاؤں نے اس بل کو بہت سوچ وچار کے بعد اس ہاؤس میں لانے کا فیصلہ کیا ہے۔

میں مانتا ہوں کہ اس بل میں بہت سی اچھی باتیں بھی ہیں جو کہ دیش کے لئے۔ سوسائٹی کے لئے مفید ثابت ہو سکتی ہیں۔ لیکن مجھے تو اعتراض اس بات پر ہے کہ ایک سیکولر اسٹیٹ میں دو قسم کی باتیں نہیں ہونی چاہییں۔ اس میں تو ایک قسم کی ہی بات ہونی چاہیئے۔ مجھے اس بات کی خوشی ہے کہ اس قسم کا بل کئی ہزار برسوں کے بعد آیا ہے جس میں ہماری بہنوں کی بھلائی کی بات کی گئی ہے اور اور کو اس پر رائے دینے کا بھی موقع دیا گیا ہے۔ جتنے بھی بل آج تک لے ہیں وے آدمی ہی بناتے آئے ہیں اور وے عورتوں کو کچلتے آئے ہیں۔ آدمی تو ایک شادی۔ دو شاستروں میں تو یہاں تک کہا گیا ہے کہ اگر بھنڈ بھڈوے والا کوئی نہ ہو تو وہ آدمی نرک، کا ادھیکاری ہوتا ہے۔ آپ ذرا سوچئے کہ یہ کتنی بڑی سزا ہے۔ اس کے متعلق شاستروں کے جاننے والے لوگوں کی رائے لی جانی چاہئے تھی اور میں سمجھتا ہوں کہ اس ہاؤس کو اس پراویژن کو پاس کرنے کا کوئی حق نہیں ہے۔ اس واسطے میں نے تجویز پیش کی ہے کہ اس میں سے لفظ سکھ کو نکال دیا جائے۔ یہ میں نے اس واسطے بھی کیا ہے کہ سکھوں کا ایک میرج لا علیحدہ ہے جس کا نام آنند میرج ایکٹ ہے۔ میں جانتا ہوں کہ ہم ہندو لا کے ماتحت ہیں لیکن ہمارا میرج ایکٹ علیحدہ ہے۔ شادی کرنے کا طریقہ ہمارا علیحدہ ہے۔ اگر یہ چیز یہاں پر پاس ہو جاتی ہے تو مجھے ڈر ہے کہ کہیں آگے چل کر آپ یہ نہ کر دیں کہ فلاں وقت پر مندر میں جانے کی اجازت ہے اور فلاں وقت پر جانے کی اجازت نہیں ہے۔ اس واسطے میں عرض کرنا چاہتا ہوں کہ آپ کو اس میں جلدی نہیں کرنی چاہئے اور اس کو پاس نہیں کرنا چاہئے۔ یہ بل کب چلا تھا۔ یہ اس وقت چلا تھا جب کہ انگریزوں نے دیکھا کہ ہندوستان میں آزادی کا موومینٹ زور پکڑتا جا رہا ہے اور جو لوگ اس میں حصہ لے رہے ہیں وے زیادہ تر

کر لیا ہے تو پھر اسی ہاؤس میں میں عرض کرونگا کہ ہم بھی اس میں شامل ہوتے ہیں اور ہم کہینگے کہ ہمیں بھی اس میں شامل کر لیا جائے -

ہندوستان کی تہذیب تو ایسی ہے کہ استری پورش کا جو مہل ہے وہ جیوتی کا مہل ہے - شریر کا مہل نہیں ہے اور ہمارے وہاں تو کہا گیا ہے :—

"دہ دھن پیریہ نہ اکھیئے بھن اکتتھے ہوئے- ایک جیوتی دوئی مورتی دھن پیر کہئے سوئے" -

دو شریروں کا ملاپ نہیں بلکہ جیوتی ایک ہونی چاہیئے - اگر آدمی مر جائے تو عورت اس کی جیوتی میں جیوتی ملا دے - ساتھ میں مر جائے - مہری سمجھ میں اس بل سے استری کا وہ کھرکٹر نیچے چلا جائیگا- ایسے وقت میں جب کہ دیش کو فیولیشن کی ضرورت ہے - ہر آدمی کی ہمدردی کی ضرورت ہے - ہم اتنے سارے لوگوں کو ایک چھوٹی سی بات سے جس میں کوئی بڑا وزن نہیں ہے - ناراض کر دیتے ہیں تو میں یہ عرض کرونگا کہ میسر صاحب کی خدمت میں اور لیڈر آف دی ہاؤس کی خدمت میں عرض کرونگا کہ کم از کم اس کو پانچ سالہ پلان کے ختم ہونے تک ملتوی رکھا جائے - پہلے پانچ سالہ پلان میں ہم نے دیش کی بنیادیں رکھی ہیں - بڑی مضبوط شادیاں - تین شادیاں اور چار شادیاں کو سکتا ہے لیکن جب ایک عورت کا آدمی مر جاتا ہے تو ہم اس کو ایک جیوتی کے برابر سمجھنے لگ جاتے ہیں اور اسے دوسری شادی کرنے کی اجازت تک نہیں دیتے- ہم تو ایسا سمجھتے ہیں کہ یہ ایک جوتی ہے جیسے جب چاہا اتار پھینکا اور نئی لے لی اور جب وہ نئی جوتی پرانی ہوئی اسے بھی تار پھینکا اور نئی لے لی - یہ ایک بہت ہی بری بات ہے - اس کے متعلق گورو نانک صاحب نے آج سے چار سو برس پہلے آواز اٹھائی تھی کہ استری کی جس سے کہ رشی - منی - پیغمبر اور اوتار پیدا ہوتے ہیں - اس کی نندا کرنا بڑا پاپ ہے - عورت کی نندا نہیں کرنی چاہیئے -

میں صرف ایک ہی بات عرض کرنا چاہتا ہوں کہ اس سیکولر اسٹیٹ میں اس کو پاس کرنے سے پہلے یہ سوچنا چاہیئے کہ اگر چار کروڑ کی آبادی والے مسلمان بھائیوں کا جو کہ ہمارے ساتھ رہتے ہیں - ان کی شرح کا خیال رکھا جا سکتا ہے تو ہندو بھائیوں کی شرح کا خیال کیوں نہیں رکھا جاتا اور اگر یہ نہیں کیا جاتا تو میں یہ عرض کرونگا کہ سکھوں کو اس قانون کی حد سے اومیٹ کر دیا جائے - ہم جب دیکھینگے کہ سوسائٹی میں یہ چیز اچھی طرح سے چل گئی ہے اور اس کو سوسائٹی نے برداشت

[سردار اکرپوری]

عورت کی کافی عمر ادھیڑ عمر ہو چکیگی یا محض عیاش کے لئے پہلی عورت کو طلاق دے دیگا اور کم عمر کی لڑکی سے دوبارہ شادی کر لیگا اور ظاہر ہے کہ اس طرح کا فعل ہماری بہنیں نہیں کر سکتیں - وہ تو شرم اور حیا کی پتلی ہیں - وہ تو اس طرح کی حرکتیں نہیں کر سکتیں - میں کہتا ہوں کہ اگر اس طرح کا قانون آپ کو پاس ہی کرنا ہو تو یہ پاس کریں کہ دس سال تک آدمی کو طلاق کی اجازت نہ دی جائے - عورت البتہ اگر چاہے تو طلاق دے سکے لیکن آدمی طلاق نہ دے سکے -

[Mr. Deputy-Speaker in the Chair]

اس واسطے میں عرض کرنا چاہتا ہوں کہ اس بل کو پاس کرنا ملتوی کیا جائے - یا سکھیوں کو اس میں سے اوسمٹ کر دیا جائے - لیکن اگر یہ بھی ممکن نہ ہو تو اس میں جو آدمی کو طلاق دینے کا اختیار ہے اس کو کاٹ دیا جائے اور بہنوں کو یہ حق رہنے دیا جائے- لیکن میں اکثر دیکھتا ہوں کہ طلاق کے حق کو ہماری کچھ بہنیں اس طرح جھپ میں ڈالے ہوئے ہیں ماتوں انہیں کوئی بہت بڑا خزانہ مل گیا ہو - میں اپنی بہنوں کو خبردار کرنا چاہونگا کہ وہ بہت سوچ سمجھ سے کام لیں - ابھی آپ بہت تھوڑی ہیں - اپنے لئے قانون بنانے کے لئے آپ کو اس ہاؤس کی بنیادیں رکھی گئی ہیں اور ان پر اپنا مکان بنانا ہے - اس پانچ سالہ پلان میں ہمیں مکان بنانا ہے اور مضبوط مکان بنانا ہے - جب مکان بن جاویگا تب اس کو سجائینگے اور اس میں تصویریں لگائینگے - یہ تو سب بیل بوٹے ہیں - پہلے مکان تو بن جانے دیجیئے - اس واسطے میں عرض کرنا چاہتا ہوں کہ اس کو ملتوی کرنا چاہیئے کم از کم اگلے پانچ سالہ پلان کے ختم ہونے تک - چاہیئے تو اس کو ملتوی دس برس تک کے لئے کیا جانا چاہیئے تھا - جب تک کہ اس دیش سے بیروزگاری نہ ہٹ جائے- سرکار کی یہ اسکیم ہے کہ دس سال کے بعد اس ملک میں کوئی بیروزگار نہیں ہوگا - وہ بات بھی پوری ہو جائی تب تک کے لئے اس کو ملتوی کر دیا جاتا -

میں اپنی بہنوں سے یہ کہنا چاہتا ہوں جو آج اس بل کے حق میں ہیں اور اس کو جلد از جلد پاس کرانا چاہتی ہیں اور من میں بڑی خوش ہو رہی ہیں - ان سے میں یہ کہونگا کہ اگر یہ بل اسی طرح پاس ہو گیا تو یاد رکھنا مصیبت تمہارے اوپر ہی آنے والی ہے- آدمی تو عیاش تبیعت واقع ہوا ہے اور جیسا کہ کرپلانی جی نے کہا تھا کہ دھوبی کے لئے یا جب اس کی

آدھی نمائندگی تو حاصل کرنی چاھیئے
تب آپ اپنے لئے مفید قانون بنا سکیں
گی - ابھی یہ جو سارے قانون بن رھے
ھیں ان کو بنانے میں آدمیوں کا بہت
بڑا ھاتھ ھے اور یہ آپ کے ساتھہ قانون
بنانے میں بہت شرارت کر سکتے ھیں
بس اور زیادہ نہ کہتے ھوئے میں تو
یہی کہتا ھوں کہ میرا جو اسپلڈمنٹ
ھے اس کو منظور کر لیا جائے -

(*English translation of the above speech*)

Sardar Akarpuri (Gurudaspur): Mr. Chairman, my amendment is that in page 1, line 13 from the clause: (b) to any person who is a Budhist, Jain 'or Sikh by religion, and—, the word 'Sikh' be omitted. I consider that to pass a law applicable only to Hindu, Sikh, Muslim or any other particular community in a secular state is a blot on our secularism. I do not think it proper that Muslims, Christians, Parsis and Jews should be exempted from this Law. Excepting one thing, there is nothing in it which does not apply to Muslims. Muslims are allowed to contract four marriages and this is the thing which goes against them. On this ground Islam has been excluded from the purview of this Bill. But I submit that according to Muslim Law, Muslims can contract four marriages only if they feel the need for it, and not more. It is not binding on them to contract four marriages compulsorily. On this ground we have not touched them. Among the Hindus there is the difficulty that if there is no male issue, then there is nobody to perform the *Pind* ceremony. Therefore, Hindus are also allowed to marry once or twice or thrice or four times, until a male child is born. This thing is in accordance with the Hindu Shastras. According to the Hindu Shastras, if there is nobody to perform the *Pind* ceremony, the deceased is supposed to go to Hell. Just imagine how severe is this punishment? Scholars of *Shastras* should be consulted about this. I believe, this House has no authority to pass this provision. It is for this reason that I have proposed that the word 'Sikh' be omitted. Another reason is that Sikhs have a separate marriage law called the 'Anand Marriage Act'. I know that Hindu Law applies to us, but our marriage Act is different. Our way of contracting marriages is different. If such a provision is passed here then I am afraid that in future you might frame a law saying that one can enter a temple only at certain specified hours. That is why I submit that we should not hurry and we should not pass this Bill.

This Bill originated at a time when the British saw that the freedom movement in India was gathering momentum and the people taking part in it were mostly Hindus. The leaders as well as the masses which were following them were also Hindsu, therefore friction should be caused among them. This Bill was brought in 1939 or 1940. In 1942 the Quit India movement was started and this Bill was shelved. Thereafter we have adopted this Bill. I am happy to note that our leaders have decided to bring this Bill before this House after great deliberation. I admit that it contains many good points which can be useful for the country and the society, but my objection is that in a secular state there should not be two policies. There should be uniformity. I am happy that after thousands of years a Bill has been brought forward which benefits our sisters and they have been given an opportunity to express their views on it. All the laws so far made have been made by men and they have always suppressed the women. Man can marry once, twice, thrice or even four times, but when the husband of a woman dies, we begin to consider her as worthless and we do not allow her to re-marry. This is highly improper. Four hundred years ago, Guru Nanak raised his voice against this and said that it was a sin to bring dishonour to women who have given birth to great sages and prophets.

I would like to ask that if in this Secular State the personal law of four

[Sardar Akarpuri]

crores of Muslims is shown deference, why should not the personal law of the Hindus be shown the same deference? If this is not done, I would request that Sikhs be excluded from the purview of this law. When society comes to accept this view finally, I would at that time ask the House that we (the Sikhs) also should be brought within its orbit.

In Indian culture the union of man and woman is not a union of their physical selves but of their souls. In my view this Bill would injure this concept and the status of women would be lowered. At this time when this country needs to be developed and we want the sympathy of every person, it would be undesirable to alienate the feelings of so many people over such a minor matter. I would request the Law Minister and the Leader of the House that this Bill be postponed at least till the completion of the next Five Year Plan. It would be still better to postpone it for a period of ten years till unemployment is banished from this country. Government has a scheme to eradicate unemployment in the next ten years. This Bill should be postponed at least till then.

My sisters are very happy to get this Bill passed, but I would tell them that it is going to cause great hardship to them. Man is by nature lustful and as Shri Kripalani has said, when a wife advances in age or becomes middle-aged, her husband is likely to divorce her and to re-marry a younger girl. This course of action is not open to my sisters. They cannot do such a thing. They are the embodiment of chastity and modesty. If you are bent upon passing this Bill, men should not be allowed to get divorce for a period of ten years. This right should be conferred upon women only.

[MR. DEPUTY SPEAKER *in the Chair*]

I have noted that some of our sisters regard this right of divorce which has been given to them as something very precious and valuable. I would like to warm them that they should proceed very cautiously. Their number is yet very small. They would be able to frame a useful law for themselves when they occupy at least half the seats in this House. It is the men who are framing laws at present and they can create a lot of trouble for the women.

Shri U. M. Trivedi: I beg to move: In page 2, *omit* lines 11 to 15.

Mr. Deputy-Speaker: May I request hon. Members who want to move their amendments to indicate the numbers? The hon. Speaker informed me that only four amendments have been moved: numbers 276, 1, 275 and 277. How is it that No. 127 is now sought to be moved?

Shri U. M. Trivedi: I have already informed the Speaker.

Mr. Deputy-Speaker: If any other hon. Member wants to move his amendments, he may pass on the slip immediately.

Shri U. M. Trivedi: While speaking on this amendment, we have heard the speech of Shri N. C. Chatterjee. When we hear the speeches of Sardar Akarpuri, Pandit Thakur Das Bhargava and Shri Rane, we get confused. The confusion arises this way. For the last three years, we have been noting that the democratic loyalty which should exist among the Members of the Congress Party does not exist.

Shri Satyendra Narayan Sinha (Gaya—West): So much the better for you.

Shri U. M. Trivedi: Yes, so much the better for me. Only yesterday, the *Times of India* has written a small leaderette quoting Sir Winston Churchill in the following language and I hope that my hon. friends on my left will take note of it.

> "To those parliamentarians who have a confused sense of loyalties, Sir Winston Churchill's recent order of priorities should be interesting and, possibly, instructive.....

Mr. Deputy-Speaker: Is this a part of the Hindu Marriage Bill?

Shri U. M. Trivedi: Yes, Sir.

Mr. Deputy-Speaker: As to how Members belonging to a party should behave?

Shri U. M. Trivedi: My argument is about clause 2. Certain arguments have been advanced by our Congress friends and I appreciate their arguments. I am only saying that if they stick to their position, if they stick to their loyalty, all our difficulties will be solved. I shall be one with them in raising my voice along with them. This is my argument and that is why I read it.

> "According to this veteran politician, the first duty of an M.P. is to his country to do what in his faithful disinterested judgment he believes is right and necessary....."

That is what Sardar Akarpuri, Pandit Thakur Das Bhargava and Shri Rane have said.

> "...for its honour and safety His second duty is to his constituents of whom he is a representative but not the delegate. And only thirdly does his duty come to the party organisation or programme. "All these three loyalties" said Sir Winston, "should be observed but there is no doubt of the order in which they stand in any healthy manifestation of democracy. We bring this to the knowledge of those who should benefit by such knowledge."

An. Hon. Member: We do not follow Churchill.

Shri U. M. Trivedi: You follow the dictates of your conscience. That would be enough. As your conscience dictates here in the House, you speak opposing certain clauses. Then, you do not stick to that. That is the only grouse against you.

With very great respect I submit that this clause 2 unnecessarily makes a distinction between the various sections of the Hindu society. At one time it was said that we want a uniform Code for the Hindu society. To begin with the idea was to have a uniform code as the Directive Principles lay down for the whole of India. We have left out the Christians. We have left out the Mohammedans because we dare not displease those who live in Pakistan. We have now come round to this position that we want to leave out certain people on whose votes we may depend upon for getting back into the House. It is on these lower castes and the Scheduled Tribes, the so-called lower castes, I should say, on whose votes many of our people depend to come into the House. And so we have made provision that to them this law of dissolution will not apply and this law of divorce will be a dead letter so far as they are concerned.

Ch. Ranbir Singh (Rohtak): They are progressive.

Shri U. M. Trivedi: In other words, they need not go before a court of law. They may decide just as they decide today that a woman is divorced by just breaking the bangles, by throwing away the cover or getting a cover from another man.

Ch. Ranbir Singh: No harm.

Shri U. M. Trivedi: Mr. Chowdhury may say no harm, but the difficulty is this that it creates this discrimination and distinction between two limbs of the same society. And what grounds have we to say the same thing about the Scheduled Tribes. I say that the Scheduled Tribes are part and parcel of Hindu society and they are Hindus. They are very numerous.

Shrimati Khongmen (Autonomous Distts. Reserved—Sch. Tribes): The Scheduled Tribes are not Hindus.

Shri U. M. Trivedi: Not according to you, but according to me they are. I have been working among the Scheduled Tribes in my State and I have always behaved with them as if they are Hindus. They may not be so in Assam, I am sorry. They are of

[Shri U. M. Trivedi]

course Hindus and nothing else. Therefore, my submission is: why put in this sub-clause (2) in clause 2, that:

> "Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

We say we want to have a uniform code, but this big community of the Hindus, these so-called Scheduled Tribes, we have created for our own purposes, and some people who want to call themselves leaders, have, for that selfish purpose, perpetuated the Scheduled Tribes. If we sincerely believe that this divorce law is necessary—I call it a divorce law, you should remember it; I do not want to call it a marriage law, because it is not a marriage law, then why this discrimination. Marriages have been performed all the time, and nobody grumbles about them. Everybody wants marriages. This law is a law of divorce and in this law of divorce, why make a special distinction so far as these communities, the Scheduled Tribes are concerned. And in the same breath, at another place, in clause 29(2) we provide that:

> "Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act."

If the argument is, as advanced from the Treasury Benches, that we are now not going to believe in the words of Manu or in the words of Yagnyavalkya or Brihaspati, but we ourselves are now becoming Brihaspatis, then, being Brihaspatis, how is it that you desire to continue this discrimination and put down a particular limb of Hindu society and put it down in the same manner as other Hindus had done hitherto? Why continue to perpetuate this ignominy upon the Scheduled Castes and Scheduled Tribes?

I therefore submit that if you sincerely believe, if this House sincerely believes, that this is a code which is very necessary for the purpose of the uplift of Hindu society, then it is necessary for the whole of the community at large, the whole of Hindu community. I will not be satisfied, I am not satisfied from the very beginning I have been saying that as far as this divorce Bill goes, it is merely a desire to do some harm or mischief to the Hindus as such, to those Hindus noted for intelligence in this country. It is with that desire that they must continue to wrangle among themselves that this Bill has been presented. There is absolutely no desire to do any good to womanhood. I do not believe it. Because, those of us who have read anything about Mohammedan law know that under the Mohammedan law, the widow of a pre-deceased son is not entitled to get a farthing and is thrown on to the streets. Yet, our righteous anger has not risen against this, and we have not said one word to protect that poor lady, and when we come to this where the Hindu society does so many things for its ladies, for its women, protects them, not only protects them but worships them, calls them goddesses, there it is that we want to bring about this mischievous act.

The whole position is this. Once we agree to this principle that we must have a uniform code so far as Hindus are concerned for the purpose of providing this divorce, then I see no reason why similar protection should not be given to the poorer section amongst the community, to the ignorant amongst the community. Why should these women belonging to the Scheduled Tribes or the Scheduled Castes be left to the mercy of the ignorant people and their ignorant panchayats. With this, I say I support the amendment.

The Parliamentary Secretary to the Minister of Education (Dr. M. M. Das): May I know whether the hon. Member has got the right to cast these aspersions on the panchayats of the Scheduled Castes and Scheduled Tribes?

Shri U. M. Trivedi: Yes.

Dr. M. M. Das: Certainly not.

Shri U. M. Trivedi: Every right, by law.

My submission, therefore, is that I support the amendment moved by Mr. Chatterjee and I hope that those of my friends in the Congress who do conscientiously believe that it is a measure which they should support, will not hesitate to support it.

With these words, I support my amendment also.

Shri V. G. Deshpande (Guna): *rose—*

Sardar Hukam Singh (Kapurthala-Bhatinda): I have no amendment to move, but I support Sardar Akarpuri. Therefore, if I am to be given an opportunity afterwards ...

Mr. Deputy-Speaker: Why afterwards?

Shri N. C. Chatterjee: There are other amendments also.

Sardar Hukam Singh: I want to speak on that amendment.

Mr. Deputy-Speaker: I will call Shri Deshpande first, exhaust those hon. Members who have moved amendments.

श्री वी० जी० देशपांडे : उपाध्यक्ष महोदय, मैं एमेन्डमेन्ट्स नं० २७६, २७८ और २७९ को सपोर्ट करने के लिये खड़ा हुआ हूं ।

Shri Pataskar: We have provided for the consideration of clauses 2 to 8 four hours and now we are taking only clause 2. The question is: we have now started taking clause by clause. Shall we have any time-limit? Of course, I am entirely in the hands of the House.

Mr. Deputy-Speaker: I understand the hon. Speaker said that we shall take up clause 2 for the present. After this is disposed of, if the House is agreeable—and my own inclination is also in that direction—the other clauses 3 to 8 may be taken together. Hon. Members may have one chance, and they may speak on all the clauses and all the amendments tabled, and then we can put them to vote separately.

Let me dispose of the names of speakers. Mr. Rane has spoken. Shri Jethalal Harikrishna Joshi. Does not want to speak? No. Shri Trivedi has spoken. Shri Ramachandra Reddi. Does not want to speak. He is not here, Shri Dabhi.

Shri Babhi (Kaira—North): I do not want to speak on clause 2.

Mr. Deputy-Speaker: Shri Nand Lal Sharma. No. Sardar Teja Singh Akarpuri. He has spoken. Then, Shri N. C. Chatterjee has spoken.

What is the amendment which has been tabled by Shri Deshpande?

Shri V. G. Deshpande: 276, 278 and 279. They are joint amendments.

Mr. Deputy-Speaker: He may speak.

श्री वी० जी० देशपांडे : मैं एमेन्डमेन्ट्स नं० २७६, २७८ और २७९ का समर्थन करने के लिये खड़ा हुआ हूं । जो विधेयक इस समय आप के सम्मुख रक्खा गया है, मेरी समझ में नहीं आता कि वह किस काम के लिये रक्खा गया है । हम देखते हैं कि एक क्लाज में डेफिनिशन है । जब हम डेफिनिशन का क्लाज देखते हैं तो पता चलता है कि डिगरीज आफ प्राहिबिटेड रिलेशनशिप किन किन में मौजूद हैं । और उन प्राहिबिटेड रिलेशनशिप में भी हैं कि कहां पर यह लागू हो और कहां पर लागू न हो । बल्कि निर्बन्ध बढ़ते ही जाते हैं । फिर देखते हैं कि कस्टम और यूसेज की बात भी कही जाती है ।

[श्री वी० जी० देशपांडे]

जिन लोगों में कस्टम और यूसेज दूसरे हैं उन के बारे में दूसरी तरह की बातें की जाती हैं । इस लिये मैं तो देखता हूं कि इस विधेयक में केवल एक सूत्र हैं और वह सूत्र यह हैं कि अभी तक पूरे देश के लिये जो एक कानून लागू होता था जिस कानून के मुताबिक हर आदमी को चलना पड़ता था, एक स्त्रीत्व का आदर्श सारे देश में था, और भारत में काश्मीर से ले कर कन्या कुमारी तक जो एक कानून लागू होता था, वह समाप्त हो गया और जो हिन्दू कानून हिन्दुस्तान के १०, १५ या २० प्रतिशत लोगों पर लागू होता था उस पर आज आघात किया जा रहा हैं । आप को बताया गया हैं कि आप मामा की लड़की के साथ शादी कर सकते हैं । वे मौसी की लड़की के साथ शादी कर सकते हैं, भांजी के साथ शादी कर सकते हैं । उनके लिए कोई कानून नहीं हैं । डिस्साल्यूशन के बारे में भी बताया गया हैं कि वे जिस प्रकार चाहें, कर सकते हैं । मैं तो केवल एक ही सूत्र देखता हूं, जो कि हजारों वर्षों से इस देश के सारे भागों में प्रचलित हैं । उस पर आज आघात किया जा रहा हैं । संशोधन २७६ में हम प्रार्थना कर रहे हैं कि आप सब लोगों को आजादी न दें । जो लोग संस्कार के विवाह में विश्वास रखते हैं---यद्यपि हमारे विधान मंत्री महोदय तो संस्कार के विवाह और सैक्रामेंटल मैरिज में भेद करना चाहते हैं---जो संस्कार का विवाह करना चाहते हैं और उस दृष्टि से जीवन व्यतीत करना चाहते हैं, आप उनको भी फ्रीडम दीजिए, उनको भी स्वतंत्रता दीजिए । हम तो आप से केवल सह-अस्तित्व के लिए प्रार्थना कर रहे हैं । इस संशोधन के द्वारा हम आपसे यह निवेदन कर रहे हैं कि जो व्यक्ति इस विधेयक के अधीन निर्धारित प्रैस्क्राइब्ड अथारिटी के सामने जा कर यह घोषणा करें कि हम पर यह कानून लगाया जाय, केवल उन्हीं लोगों पर यह कानून लागू किया जाय । जो लोग इसका उपयोग नहीं करना चाहते हैं, उन पर इसको लागू न किया जाय । हम लोग बहुत थोड़े हैं । हम उससे बच जायेंगे । आप कहते हैं कि हिन्दुस्तान की पूरी जनता आपके साथ हैं और ९० फीसदी लोग इसको चाहते हैं । यदि यह बात सत्य हैं, तो आप यह व्यवस्था कर दीजिए कि जो लोग इस हेतु डिक्लेरेशन फाइल करेंगे, वे इससे लाभ उठा लें और बाकी हमारे जैसे छोटे लोग रह जायेंगे । मैं समझता हूं कि ऐसा करने से आपका कोई नुक्सान होने वाला नहीं हैं । अगर यह मेजर वाकई बड़ा लोकप्रिय हैं, तो ९० या ९९ फीसदी लोग, जैसा कि आप कहते हैं, इस प्रकार मैजिस्ट्रेट के सामने डिक्लेरेशन फाइल करने चले जायेंगे । इसके लिए आपकी ओर से कुछ किए जाने की मुझे आवश्यकता महसूस नहीं होती हैं । जैसा कि अभी श्री चैटर्जी ने कहा हैं, जब कच्ची मंमन लोगों पर शरियत एक्ट लगाया गया, तो यह व्यवस्था की गई कि वे प्रैस्क्राइब्ड अथारिटी के सामने जा कर घोषणा करते थे कि हम पर यह ला लगाया जाना चाहिए और तब वह लगाया जाता था । मैं समझता हूं कि लोक-राज्य में---प्रजातंत्र में---जिसको कि हम ने स्वीकार किया हैं, यह उचित ही हैं कि इस प्रकार के समाज-सुधार के विषय में यह व्यवस्था की जाय कि जो लोग इस प्रकार के कानून को मानते हैं, वे मैजिस्ट्रेट के सामने जा कर घोषणा करें और उस कानून से लाभ उठायें । उन लोगों के रास्ते में हम आना नहीं चाहते हैं । परन्तु कुछ बहुत थोड़े से लोग ऐसे भी हैं, जो कि पुराना जीवन व्यतीत करना चाहते हैं, जिनके विषय में आप कहते हैं कि उनका कोई कानून नहीं हैं, कोई बन्धन नहीं हैं ।

यहां पर यह भी कहा गया कि हम कास्ट के बारे में सोचने के लिए तैयार ही नहीं हैं । मुझे बताइये कि आपने यह जो कानून बनाया हैं, इस पर बिना कास्ट के कैसे कार्य किया जा सकता हैं ? उदाहरण के लिए आप देखिए कि जब डिस्साल्यूशन प्रोसीडिंग्ज के विषय में कोई कोर्ट में जायगा, तो उससे पूछा जायगा कि "आपकी जाति क्या हैं ? उपजाति क्या हैं ?" तब वह बतायगा कि मैं जाट हूं और अमुक प्रान्त का रहने वाला हूं और इसी लिए वह

कानून मुझ पर लागू होना चाहिए। कल अगर कोई मामा की लड़की के साथ शादी करना चाहता है, तो कोर्ट में उससे जाति और उपजाति के विषय में पूछा जायगा और उसे बताना होगा कि "मैं ऋगवेदी देशस्थ ब्राह्मण हूं और महाराष्ट्र का रहने वाला हूं।" तब मामा की लड़की के साथ उसकी शादी मान्य हो जायगी। आप कहते हैं कि हम कम्यूनलिज्म के विरुद्ध हैं, परन्तु इस कानून के द्वारा तो आप न केवल कम्यूनलिज्म को, बल्कि कास्ट-इज्म, सबकास्ट-इज्म और रिजनलिज्म को प्रोत्साहन दे रहे हैं। एक राष्ट्र के टुकड़े टुकड़े करने के लिए आप तैयार हुए हैं। हम कहते हैं कि ये टुकड़े तो आप कर रहे हैं, लेकिन जो लोग शास्त्रों को मानते हैं, परम्पराओं को मानते हैं, जिनकी भावना इस बारे में अत्यन्त तीव्र है और जो कहते हैं कि इस तरह हमारी इच्छा के विरुद्ध जबर्दस्ती यह कानून हमारे ऊपर न ठूंसिए, उनको तो आप इस से मुक्त कर दीजिए। जो लोग आपके साथ हैं और आपके इस कानून को पसन्द करते हैं, वे कोर्ट में जा कर घोषणा करें कि हम पर यह कानून लागू किया जाय, उन पर आप लागू कर दीजिए, परन्तु जो थोड़े से प्रतिगामी, पुराने ख्याल के लोग हैं, जो मनु और याज्ञवल्क्य के पीछे चलने वाले हैं, जो कि कभी के मर गए, खत्म हो गए, जिनका कुछ नहीं रहा, उनका गला छोड़ दीजिए। इतनी प्रार्थना मैं इस संशोधन के द्वारा चाहता हूं।

Shri V. G. Deshpande: I beg to to move:

(i) In page 2, *omit* lines 11 to 15.

(ii) In page 2, *omit* lines 16 to 19.

Mr. Deputy-Speaker: These amendments are also before the House.

Sardar Hukam Singh: I stand up to support the amendment that has been moved by my friend, Sardar Akarpuri. I did not take courage to move an amendment of that sort, but now that a Congress Member has come up to move it, I do support it.

When Dr. Ambedkar moved the old Hindu Code Bill, I had moved an amendment that Sikhs should be excluded from the operation of the Bill. I made out my case—I tried to rather. But the reply came that it was too late in the day now to argue that Sikhs should not be governed by the social legislation of Hindus, and he quoted certain decisions of High Courts as well, that whenever a case had gone to the judicial courts, they had held that the Sikhs were governed by the Hindu society laws, particularly social laws, though they had a distinct religion of their own. But there was one snag in that argument, because Sikhs are mostly agriculturists. They live in villages. About 90 per cent of them are cultivators and only 10 per cent. live in towns. So far as Sikhs living in towns are concerned, of course there is no doubt—nobody can deny—that they are governed by Hindu laws. But so far as the agriculturist Sikhs are concerned, there are special customs, and the General Clauses Act has laid down that in respect of any marriage, divorce, adoption and all those things, it is the custom that prevails and the strict Hindu law does not govern agriculturists in the Punjab. So that argument which Dr. Ambedkar advanced then only applied to 10 per cent. of the Sikhs living in towns and not to the remaining 90 per cent. living in villages.

Pandit Thakur Das Bhargava: What about Hindu cultivators?

Sardar Hukam Singh: They have their customs too in the Punjab.

Pandit Thakur Das Bhargava: What about Hindus of the Punjab living in towns? They are also governed by custom.

Sardar Hukam Singh: They have certain customs. But then where is the Hindu law? Is it found in some place or not?

Shri S. S. More (Sholapur): It has gone with Manu.

Sardar Hukam Singh: Therefore, I want to submit, as I did at that time

[Sardar Hukam Singh]

that there are special customs which those who follow regard them with certain sentiments. They love them; they think that they are the best. We feel that we are marching towards progress. I am one of those who believe that society cannot stand at a particular place; it has to move on, and so the social laws also have to progress. They cannot be static. I am not one of those who would say that because at one time it was so, therefore always, for all times to come, it has to remain the same. But what are these customs? They have grown out of necessity, out of environment, out of social requirements, and they represent exactly the advance of the society.

Shri Meghnad Saha (Calcutta North-West): Retrogression.

Sardar Hukam Singh: Now, we are moving towards a society wherein these degrees of prohibited relationship should be reduced, where we should have greater facility or opportunity to marry even those relations who were prohibited in the first instance. Whether it is retrogression or progress, my friend would say. But if it is progress, because we are including it in our modern laws, then we have gone much ahead of it, we have made a greater advance than what the legislators are trying to do by this Bill. To some it may sound very odd, but it is a fact that among agriculturists in our parts, cousins do marry each other. One of my friends was telling us just now about it. Perhaps it might be obnoxious for him to marry the maternal uncle's daughter, but there is nothing strange in it so far as customs are concerned and frequently such marriages do take place.

12 Noon

Then, take the case of adoption. There too, we have specific rules. According to Hindu law, there must be some ceremonies, and there are certain restrictions.

Mr. Deputy-Speaker: Is it said that amongst Sikhs, first cousins on the paternal line could marry?

Sardar Hukam Singh: There are instances of that as well. There is the famous family, which my hon. friend Pandit Thakur Das Bhargava must be knowing, of Chaudhuri Mala Singh and others. That was a very affluent and very progressive family, and in that family, they have married the first cousins. One brother's daughter was married to the second brother's....

Mr. Deputy-Speaker: Is it prevalent?

Sardar Hukam Singh: Not so prevalent.

Pandit Thakur Das Bhargava: Most rare.

Mr. Deputy-Speaker: That has been copied from the Muslim law.

Sardar Hukam Singh: I am also saying that first cousins marrying is very rare. I admit that.

But I was talking of a person marrying his maternal uncle's daughter. That is very much prevalent.

Dr. Rama Rao (Kakinada): That is very broadly prevalent.

Sardar Hukam Singh: I was talking about adoption. So far as Hindu law is concerned, there are certain restrictions as to age, certain ceremonies have to be performed, and certain other things also are to be adhered to in this regard. But there is nothing like that so far as customary adoption is concerned. It is only taking in a partner for the sake of cultivation; and the person concerned is the owner of the whole property. Sometimes, the man who is adopted may be older than the adopter himself. A man who is 60 years of age might be adopted by a person who is only 30 years of age. That may sound very strange to my hon. friends, but it is there. There is no caste restriction also. There are instances where daughter's son also has been adopted. That has been the custom in Punjab since long.

Other restrictions of the Hindu law also are not there. Only a simple

declaration is required that such and such a person is adopted; no ceremonies are to be undergone either. The same is the case with marriage also.

When I put all these things before Dr. Ambedkar at that time, he ridiculed the idea and said, perhaps in Punjab, it is marrige made easy, adoption made easy, and divorce made easy. You may call it in any way you like, but the fact remains that we have got these simple rules of marriage, and there are only very few degrees of prohibited relationship.

We are marching towards that progress, and when we have adopted this course, I am sure we will be coming to the case of first cousins also in a few years' time when we will say that the daughter should take a share in the property of her father, I assure you, and I believe, that within two decades, we shall be compelling....

Pandit Thakur Das Bhargava: This is a move in the right direction.

Sardar Hukam Singh: This is a move in that direction, that first cousin shall be compelled to marry. Otherwise, I shall just give you an instance to show what will happen in Punjab particularly. It would lead to great disaster there. If in the case of small cultivators, or small landlords who own about four or five acres, the daughter is to take away her share from her father's property, I can only envisage that it would again lead to child infanticide, for they would all be killed in their infancy.

Pandit Thakur Das Bhargava: If you allow custom for marriage and divorce, then you must allow custom for inheritance also.

Sardar Hukam Singh: If that is allowed, then the position is different. What I was afraid of when Shri N. C. Chatterjee and Pandit Thakur Das Bhargava have been very emphatic in arguing that this custom should not be allowed....

Mr. Deputy-Speaker: We are discussing only marriage, and not the consequences of marriage.

Sardar Hukam Singh: Exactly. When we discuss that, we have also to discuss who are to be governed by it, whom it would affect, and what consequences would follow. We have to consider all these things when we consider the classes to whom this Act is to apply. When the Hindu Code Bill was being discussed then, all of us were vehement in demanding that the custom should be allowed to remain in that Bill and should not be taken away. Now also, we are saying just the same thing that customs should be allowed to exist.

Shri N. C. Chatterjee: Let me explain my position. My amendment only says that if you allow custom for 80 per cent. of the people, then you should make this not a compulsory measure but only a permissive measure, and anybody who files a declaration only should be governed by it.

Sardar Hukam Singh: I also understood Shri N. C. Chatterjee to say that only a very small percentage would be left—if custom is allowed to prevail—who would be governed by this law. Then, you cannot call it a Hindu law at all. Why should you force it only on the 20 per cent. and say that they should accept this chain, while the others might be allowed to have that liberty? I also say that custom should be allowed to remain or continue as it is. If that is not allowed, and the Sikhs also are roped in, then I have my fears that they would feel perturbed, and the effect that it would have must be disastrous in all these areas in North India.

Therefore, I have stood up to support the amendment of my hon. friend Sardar Akarpuri. If these customs are allowed to remain, there would be no harm in that. But if these customs are to go, then certainly we would object to the Sikhs being included in this measure, because only about 10 per cent. of them are living in towns and are governed by the Hindu law, while the other 90 per cent. have their own customs which they value very much. With these words, I support Sardar Akarpuri's amendment.

Shri Pataskar: This clause 2 which is under discussion now is the clause which relates to the scope of the Bill regarding the persons to whom this Bill would apply. I think this is one of the matters which has been discussed several times before, because it is the same scope in almost all the other Bills which are parts of the Hindu code.

I would not refer to those arguments about custom etc., being preserved because I find that there is a sharp division of opinion amongst the Members. I shall try to avoid entering into a discussion of that aspect now, but I might refer to it after I have had the chance fully to hear the other people with respect to whom the question arises whether the customs should or should not be saved.

Before I come to the amendment of my hon. friend Shri N. C. Chatterjee, I shall refer to the amendments of my hon. friends Dr. Rama Rao and Shri U. M. Trivedi. Sub-clause (2) of clause 2 reads:

> "Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of the Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution, unless the Central Government, by notification in the Official Gazette, otherwise directs".

This provision is necessary, as has already been pointed out, in view of the special provisions in the Fifth Schedule of the Constitution with respect to the Scheduled Tribes. I need not tell the hon. Members that the Constitution-makers thought that in the state of things as it prevails now, it is desirable that with respect to the Scheduled Tribes areas, we should try to move very cautiously in all matters, whether they are social, economic or otherwise. So, much of the powers has been left to the Advisory Council, and the Rajpramukh or the Governor so that he may decide in consultation with them which laws should be made applicable to these areas, and which should not, or what portions should be made applicable and what portions should not be made applicable. This has been done in view of the delicateness of the whole situation, and in order that in course of time they may be enabled to form one mass with us. It is therefore quite consistent with the spirit of the Constitution and the letter of the provision that has been laid down there that this provision should be made here also. For, things are not so ripe as yet that we should try to lay down certain things here which will go counter to what has already been provided in the Fifth Schedule. I am sure my hon. friend Shri Rane will realise this and so also Shri U. M. Trivedi. I do not mind whether he belongs to this party or the other. The fact is that this has been provided in the interests of the people and it is consistent with the provisions of the Constitution which wants to deal with these people in a particular way for the time being. Therefore, that provision has been made there. Of course, even when this provision is there, when the time comes, and when the advisers think that this step may be advisable, they will treat it like any other law. So, this is a very necessary provision.

I think the other amendment of my hon. friend Shri U. M. Trivedi is not necessary. I have not been able to understand, though I tried to follow very closely, as to why he wants these words to be dropped. It is probably from the point of view of general opposition, to the very scheme of the Bill itself.

Shri U. M. Trivedi: My amendment is to clause 10. I have not yet spoken on it.

Shri Pataskar: I am only on clause 2.

Shri U. M. Trivedi: I have no other amendment to clause 2.

Shri Pataskar: I thought you had an amendment on which you wanted to speak.

Then I come to the amendment of Sardar Akarpuri. He wants the words

or "Sikh" to be omitted. The arguments that he advanced were more or less along the same lines as those of many friends who think that the Bill should not be made applicable to anybody for the time being. I think yesterday when I spoke I said that so far as our position is concerned it is very clear that we want the present law to be made applicable in respect of these people who are now governed by what is known as Hindu law and 'Hindu' in that context does not mean religion. I may assure those of my friends who might have any doubt on that matter that so far as religion is concerned, we have shown that Sikhs belong to a separate religion and this is why sub-clause (b) is there: "to any person who is a Buddhist, Jaina or Sikh". I think that amount of sensitiveness should not be there. As Sardar Hukam Singh has said, Hindu law has been made applicable to all those communities for the time being and we want to introduce uniformity in that matter and it will come in the normal way. Therefore, it has been provided there.

I now come to the amendment of Shri N. C. Chatterjee. It is amendment No. 276. It reads as follows:

> "Provided that such person being competent to contract within the meaning of S. 11. of the Indian Contract Act, 1872. (No. IX of 1872) makes declaration in the prescribed form and files the same before the prescribed authority declaring that he desires to obtain the benefit of this Act and thereafter he will be governed by the Act".

As was already pointed out by one of the hon. Members, this is probably a thing which has been tried to be put in to strike at the very root of this Bill. I myself said yesterday and it is a fact which nobody denies, that divorce is allowed by custom among 80 per cent of the people and with respect to the 20 per cent. alone divorce is not allowed. But clause 2 does not relate only to divorce but also to marriage. My friends admitted that they had no objection to inter-caste marriages and to the provisions about monogamy also they had no objection. Then, why base your argument only on the basis that this Bill is nothing but a Bill which is meant for divorce. Of course my friend Shri U. M. Trivedi contends like that and I differ from him in that respect. I would point out that the Bill covers so many other items but minds of some people seem to be agitated on the divorce provisions. The argument is that even for the purposes of inter-caste marriages or for monogamy—for everything—a man should be brought under the provisions of this Bill only if he consents to be allowed to be governed in this way. It was pointed out that this is a provision which my friend has exactly copied from the provisions of an Act which was introduced as far back as the time when, as we know, the Khojas and the Kutchi Members were sought to be governed by the Hindu law in the matter of succession. Then there was an agitation. They said that those Muslims should be governed by the Muslim law. I will not recount all that has happened. But naturally we know the decisions and it was thought proper by the Government that they should bring forward a Bill by which they should be weaned away, so far as this matter is concerned and that they should be incorporated with some other group based purely on religion. Therefore, we need not go into the correctness, and the right or wrong of what happened then. That is a different matter altogether. At the time when we are trying to have a uniform law—some of my friends many not agree with me on this point—not only about divorce but about some of the customary laws, to say that some people who do not choose to be governed by this law shall be allowed to be governed by things which according to their belief is good, is not proper. I think we have discussed this matter threadbare. As I said yesterday, the present state of Hindu law, according to us, is neither uniform nor consistent with the present state of affairs, and we do not want to allow certain other matters to be left out because it will add to the confusion and not

[Shri Pataskar]

resolve it. It is from that point of view that, with all my anxiety and respect for the sentiments of all classes of people, this has been done. As I said yesterday, I know that whenever such measures come, there will be people, there are bound to be people, who honestly differ, I respect their difference, but when I here come forward with a measure which in my opinion has been made applicable to a very large section of the people in order that it may be the first step to a uniform code which we have envisaged, such amendments could not be accepted. It is from that point of view of having a uniform code—we may not be doing it just now, and my friends are blaming us for that—that this Bill has been brought, and to allow an amendment like this would be to negative this measure.

Another hon. Member asked why we are making this law applicable to the intelligentzia which is only 20 per cent. of the population. The reason is simple. I think the intelligentzia, in our opinion—you may differ from us—needs a measure like this and this is intended for them also. There is no question of differentiating between them and the others. We believe that we should not allow different classes to come up in addition to what are already existing, and there should not be a further classification of people who claim something different and superior on the ground of being intelligent. People may become intelligent. They may become learned. It is open to anybody to become learned. We do not want to allow classes of this type to continue. As I said yesterday—I do not want to refer to it at great length again—we know to our cost in this House and probably Shri N. C. Chatterjee who comes from an eastern State knows it, as to what sort of distinction was sought to be perpetuated and what harm it did and can do. Such harms will be perpetuated. Therefore, I appeal to him that it is not in that spirit that we bring this clause forward but in the spirit in which we believe and we believe this would be good. Therefore, I am unable to accept any of the amendments which have been moved by my hon. friends.

Shri Damodara Menon (Kozhikode): May I seek a clarification? My hon. friend Sardar Hukam Singh, was speaking about certain rights of the Sikh. I want to know whether the saying clause—clause 29(2)—will not save the special rights of the Sikhs.

Shri Pataskar: Is the question put to Sardar Hukam Singh or to me?

Shri Damodara Menon: I want the hon. Minister to reply.

Shri Pataskar: I think clause 29(2) is bound to be a subject matter of a good deal of controversy and I have already tried to avoid entering into that matter at this stage, so far as clause 2 is concerned.

श्री भक्त दर्शन (जिला गढ़वाल—पूर्व व जिला मुरादाबाद—उत्तर पूर्व): मैं आपकी इजाजत से विधि मंत्री महोदय से एक प्रश्न पूछना चाहता हूं । अभी विधि-मंत्री जी ने फरमाया कि यह जो विधेयक हम पास करने जा रहे हैं, यह सब हिन्दुओं पर लागू होगा, केवल उन पर लागू नहीं होगा जो कि पुराने कस्टम्स्, रीति-रिवाजों से बंध हुए हैं....

श्री पाटस्कर : मैंने ऐसा नहीं कहा । That is not correct.

श्री भक्त दर्शन : जौनसार-बाबर के इलाके में या हिमाचल प्रदेश के कुछ हिस्सों में पुराने कस्टम के नाम पर अब भी बहु-पतित्व की प्रथा है, पांच, सात पतियों की एक ही पत्नी होती है । तो क्या इस कानून के बन जाने के बाद यह प्रथा चालू रहेगी या समाप्त हो जायेगी ? मैं बताना चाहता हूं कि वह ट्राइबल एरिया नहीं है, न वह शेड्यूल्ड कास्ट्स या शेड्-यूल्ड ट्राइब्स ही हैं ।

श्री पाटस्कर : जिस वक्त क्लाज 3 आयेगा उस वक्त मैं इसका जवाब दूंगा, आप जरा

सब् रखिये । जैसे और लोग अपना दिमाग बिगाड़ रहे हैं, वैसे आप अपने दिमाग को मत बिगाड़िये ।

Mr. Deputy-Speaker: Now, I will put the amendments to the vote of the House. Amendments 1, 37, 127, 211 and 278 which are indentical seek deletion of lines 11 to 15 in page 2. The object of the amendments is that the Code ought to be made applicable to Scheduled Tribes also. I will put all of them together.

Shri K. L. More (Kolhapur *cum* Satara—Reserved—Sch. Castes): Sir, I want to speak on my amendment No. 278.

Mr. Deputy-Speaker: I am not going to allow any speech now. I will put the amendments numbers 1, 37, 127, 211 and 278 together to the vote of the House. The question is:

In page 2, *omit* lines 11 to 15.

The motion was negatived.

Mr. Deputy-Speaker: Does Shri Dabhi want to press his amendment number 273?

Shri Dabhi: I have not moved it.

Mr. Deputy-Speaker: It is put here on this paper. Now, there is amendment No. 277 of Shri Nand Lal Sharma. It has two portions one seeking deletion of lines 11 to 15 and the other seeking deletion of sub-clause (3).

Shrimati Renu Chakravartty (Basirhat): This has been moved by Shri V.G. Deshpande also.

Mr. Deputy-Speaker: I have not yet come to Shri V. G. Deshpande. With regard to this amendment the earlier portion is already barred. So I will put the latter portion to the vote of the House.

Shri Nand Lal Sharma (Sikar): It is a misprint, Sir. My amendment was that sub-clause (b) should be omitted i.e. lines 13 and 14 should be omitted and after "Arya Samaj" *add* "Buddhist, Jain or Sikh".

Mr. Deputy-Speaker: Then that is also barred. So, amendment number 277 also goes.

Now I will put amendment No. 275. The question is:

In page 1, line 13, *omit* "or Sikh"

The motion was negatived.

Mr. Deputy-Speaker: Then there is amendment No. 276 by Shri N. C. Chatterjee and others trying to add a declaration or that the Code ought to be made applicable only to those persons who make a declaration. I will put it to the vote of the House. The question is:

In page 1, *after* line 20, *add*:

"Provided that such person being competent to contract within the meaning of S. 11 of the Indian Contract Act, 1872 (No. IX of 1872) makes declaration in the prescribed form and files the same before the prescribed authority declaring that he desires to obtain the benefit of this Act and thereafter he will be governed by the Act."

The motion was negatived.

Mr. Deputy-Speaker: There is only one more amendment and that is number 279 seeking to omit lines 16 to 19, that is sub-clause (3) which says:

"The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section."

The amendment seeks to delete this portion. I will put it to the vote of the House.

The question is:

In page 2, omit lines 16 to 19.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 2 stands part of the Bill."

The motion was adopted.
Clause 2 was added to the Bill.

Mr. Deputy-Speaker: Now, discussion will proceed on clauses 3 to 8, all of them together. I have received a list of amendments. Hon. Members may rise one after another. I will call them one by one. This is to conclude, at 3 O'clock. How much time hon. Minister take?

Shri Pataskar: Half an hour.

Mr. Deputy-Speaker: So, by 2-30 P.M. the hon. Members will conclude their discussion.

Shri N. C. Chatterjee: I beg to move:

In page 2, lines 32 to 35, *omit* "and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act."

If you kindly look at page 2 lines 32 to 36, clause (b) says: "district court means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of orginal jurisdiction". I have asked for the deletion of the rest of the sub-clause.

My next amendment is 285 reading thus:

In page 3, for lines 35 and 36 *substitute:* "Making of the declaration as provided for in clause 2".

But this amendment now falls because the declaration amendment has been negatived.

Then, I beg to move:

In page 4, line 9, for "eighteen" *substitute* "twenty-one".

That is regarding the marriage age. I have asked to substitute "twenty-one" for "eighteen" on page 4 in line 9. Sub-clause (iii) of clause 5 says: "the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage". Unfortunately it has not been properly typed. My amendment was "twenty-one" for the bridegroom and "eighteen" for the bride. I would request you to kindly make a note of that, because I have asked for deletion of sub-clause (vi) of clause 5: "where the bride has not completed the age of eighteen years etc." That should automatically go.

Then, I beg to move:

In page 4, lines 12 and 13— *omit* "unless the custom or usage governing each of them permits of a marriage between the two".

This amendment stands in my name, and of Shri B. D. Shastri and others. On page 4 lines 12 and 13 read: "the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two." I am asking for the deletion of the latter part of this sub-clause.

Then, I beg to move:

In page 4, lines 14 to 16, *omit* "unless the custom or usage governing each of them permits of a marriage between the two".

Sub-clause (v) reads: "the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two." I am asking for the deletion of the exception of customary usage.

Then, I beg to move:

In page 4, *omit* lines 17 to 19.

In this amendment I am seeking the deletion of sub-clause (vi) because I have already suggested that the bridge's age ought to be 18. There-

fore, there cannot be any question of the bride being below 18.

Mr. Deputy-Speaker: Such amendments are not allowed. The hon. Member may oppose the clause. He cannot ask for deletion of a clause.

Shri N. C. Chatterjee: I am only asking for deletion of sub-clause (vi) and not for the whole clause.

Mr. Deputy-Speaker: I am only saying that it is not the usual practice to say that a particular clause be omitted. If it is only a sub-clause then it is all right.

Shri N. C. Chatterjee: Clause 5 specifies the conditions for a Hindu marriage, (i), (ii), (iii), (iv), (v) and (vi). I am asking for the deletion of (vi).

Mr. Deputy-Speaker: Very well.

Shri N. C. Chatterjee: And if you kindly see my amendment No. 302, I am asking for the insertion of another clause there, a new sub-clause about extraction of dowry.

I beg to move:

In page 4, *after* line 19, *add*:

"(vii) that the bride or the bride's guardian or relations shall not present or give any dowry in any shape or form as a consideration of the betrothal or marriage".

Then, with regard to clause 7, I have an amendment, No. 307.

I beg to move:

In page 5, *for* lines 19 to 21, *substitute*:

"*Ceremonies for a Hindu marriage.*—(1) A Hindu marriage shall be solemnized in accordance with the sacramental rites and customary ceremonies."

The sub-clause as it is reads: "A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto". We have suggested in amendment No. 307 that "it shall be solemnized in accordance with the sacramental rites and customary ceremonies."

Then, if you look at amendment No. 309, we want sub-clause (2) of clause 7 to be slightly altered.

I beg to move:

In page 5, *for* lines 22 to 25, *substitute*:

"(2) Such rites and ceremonies shall include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire) and the marriage shall become complete and binding when the seventh step is taken."

The sub-clause now reads: "Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken." We are saying that "such rites and ceremonies shall include the *Saptapadi* etc."

Mr. Deputy-Speaker: That is, even marriages which are done customarily without *Saptapadi* ought to have *Saptapadi* hereafter—is that the idea of the amendment?

Shri N. C. Chatterjee: The idea of the amendment is this, that marriages should be in the sacramental form and *Saptapadi—Sakha Saptadi bhava*—shall be an essential part of the marriage.

What I am suggesting is this. I am at one with my hon. friends who have tabled amendments trying to suppress this evil practice of dowry. It is a perfect scandal in my part of the country, that is Bengal. There are girls who have been committing suicide. They provoke temporary comments and criticism, but social consciousness then reconciles itself to the existing state of things. It is a matter of great shame that even very highly cultured boys take dowry.

Dr. Ram Subhag Singh (Shahbad South): It is the cultured boys who ask dowry.

Shri N. C. Chatterjee: They ask more, but the uncultured are not exempt from this virus. When I was in Calcutta I was associated with a very big college, one of the biggest colleges in Bengal. There were a number of students, about four thousand, on the rolls and 1,500 or nearabout were girl students. Even then we knew, although the girls were passing B.A. and M.A., unless you paid a dowry of ten or fifteen thousand rupees it was difficult to get them married. I cannot understand why the girls, who agitate and shout, why they cannot pass a resolution that "for three years we won't marry any man who asks for a dowry". Because it is opposed to our religion and opposed to the cardinal principles of any religion, and it should be suppressed and removed at any cost.

Instead of saying that there will be a fine or something, you should make it an essential condition of marriage. When you are trying to introduce a civilised marriage system, do it properly and rescue the people from this curse. For an ordinary clerk working in an office or a school teacher or a professional man having three or four daughters, the marriage of the first daughter means, the mortgage of the family house, the marriage of the second daughter means selling of the house, and I do not know what happens to the others. On the top of education of boys and other things.....

Mr. Deputy-Speaker: Has the hon. Member thought about any such penalty as is provided in the *shastras*? In the *Brahma* form of marriage there is a particular kind of succession. In the *Asura* form of marriage, where money is given for purchasing the bride, a different kind of succession is provided for. The hon. Member evidently wants to say that the marriage itself will be a nullity; that is, the man will give away his money, and the marriage will also be a nullity?

Shri N. C. Chatterjee: I want something to be done effectively. I will be happy if they take the *Brahma* and *Asura* forms of marriage. But the modern *Asuras* do not listen!

Shri U. M. Trivedi: They are not here to listen.

Shri N. C. Chatterjee: They have their own secular notions. They are making secularism a religion. Dr. Radhakrishnan has said in one of his great books on Hindu civilisation that the worst menace of the world today is secularism. And secularism is being made a religion. In totalitarian countries and the so-called progressive—aggressively progressive—countries, they have made it a religion. He has said that they have their own Pope, their own liturgy, and they recite the same when they admit people in their cult and faith.

If you do not think of *Brahma* or other forms of marriage, if you want to make some kind of law and stamp out this curse, take courage in both hands and do something; not this thing or something like this which will be completely nugatory; but make it a condition of marriage and say, "From tomorrow we, the elected Members of Parliament, declare here and enact this law that there should be no exaction, no force, nothing of the kind, and you cannot demand anything, any consideration for betrothal or marriage." That will be a great thing for the country.

With regard to the jurisdiction point—that clause is clause 3—my amendment is No. 280. I have suggested that power should not be given to all the State Governments in India to vest extraordinary power about the jurisdiction of working this statute to all sorts of courts.

I want that the clause should read: " 'district court' means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction." I think we should

stop there. Because in this we never know, the State Government can, by a notification in the Official Gazette, appoint anybody it likes.

Shri Venkatraman (Tanjore): Not anybody; another civil court.

Shri N. C. Chatterjee: I know. But I do not want that this power should be vested with them. I take it that civil court of original jurisdiction is quite enough. What is the point of bringing in this additional power? I do not like to give this power to the State Government. These are very delicate matters. I would rather prefer that these Judges, if we at all pass this Act and if we want to make it effective, that they should be given proper training. It is a psychological training that they should have for a matrimonial court. In England lady Magistrates are appointed who are given a special training. That is in other countries also. Special Magistrates are appointed to deal with such matters and they know how to make a proper and psychological approach. They should not try merely to look at it from the legal point of view, or from the point of view of disrupting the marital tie as quickly as possible. They should try to bring about reconciliation. That should be their main task; not disruption of the marital tie, but if possible the fracture should be repaired. That should be the predominant effort.

And then, if you look at my amendment No. 291, I want that the marriage ages should be raised to twentyone and eighteen. These are meant not for little children, not for runaway girls or boys from schools or colleges. If you want a civilised code, a secular code, a non-*shastraic* code, for progressive people, at least say that the boy's age should be twentyone. Why allow young boys to marry? That will lead to various troubles. You should have the courage to say that a boy should be at least a *person sui juris* before he undertakes this kind of obligation. Especially, you are making it a civil contract. Therefore, you should have the capacity to enter into a civil contract and understand the obligations, not of the sacramental marriage, but of this kind of marriage.

Mr. Deputy-Speaker: Is he not competent to contract it at the age of 18?

Shri N. C. Chatterjee: I want to make it 18 in the case of girls and I want a higher age-limit for the bridegrooms. Therefore, I suggest that 18 should be for the purpose of the bride and 21 for the purpose of the bridegroom. It will not be right to make the same thing for both the bride and bridegroom.

Mr. Deputy-Speaker: Why not the girl be older than the boy?

Shri N. C. Chatterjee: I am not so progressive as some of my hon. friends are. They may have it otherwise.

With regard to my amendments No. 295 and 297, this again is a peculiar virus in the system. What is the good of Shri Pataskar saying that there is uniformity? Is this uniformity that the parties are not within the degrees of prohibited relationship? What are the degrees of prohibited relationship? After making a complete legislation and enacting a chapter on prohibited relationship, you say "unless the custom or usage governing each of them permits of marriage between the two". That means that you make a law and then make a mockery of the law. If you make a law, stick to it. Have prohibited degrees, make them as elastic as possible, as progressive, as redical, and as civilised as possible, and then stick to it. But why are you playing with it? You say "the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two." My hon. and learned friend, Pandit Thakur Das Bhargava, said that there are certain

[Shri N. C. Chatterjee.]

types of connections which are not desirable. You should have certain restrictions, and force them. Otherwise, every family will say "we have this custom in our family". Family customs are quite good; regional customs are quite good and local customs are quite good. You can establish any custom in a court of law and you can make this law nugatory. Do not make this kind of loop-hole whereby the main provisions will be rendered nugatory.

I have pointed out that in clause 7, you should at least have some respect for people who want the sacramental form of marriage kept up. You talk of *saptapadi* and you have *saptapadi* and, therefore, do not make it optional. In clause 7, you say "Where such rites and ceremonies include the *saptapadi* ...." Can you think of a customary marriage or a Hindu marriage according to the customs prevailing in India for thousands of years, without *saptapadi*? You cannot. Since *saptapadi* has been recognised as essential, have it and say boldly that *saptapadi* shall take place and marriage will then become binding". Please make it least repugnant to people who have cherished with some reverence, some sanctity, for this type of marriage. It is concession to established norm; it is a concession to certain things which have happened for ages and ages, which have stood the test of time, and when you recognise them, give them the proper respect and treat them with the reverence that is due to them.

Shri Sadhan Gupta (Calcutta South-East): I have listened to Shri Chatterjee with the greatest attention and it is only on a few things that I agree with him, with some reservations, but in most of what he said, I beg to differ most completely. First of all, let me finish with the part where I agree with him, that is regarding the dowry. I agree to this with some amount of reservation, because I would not agree to make the payment or non-payment of dowry decide the validity of the marriage. The reason is obvious. The system of dowry is one of the greatest evils in our society and should be checked with a very firm hand. There is no doubt about it, But when we make marriage subject to the payment of dowry or when we make the validity of marriage depend on the payment or non-payment of dowry, we let loose certain consequences over which we may not have any control. It may be that the parents on both sides—the bride's parents and the bridegroom's parents—it may be even in spite of their protests, or in spite of the protests of one of them that payment of dowry is arranged and the marriage fixed up. Now, the marriage goes on very well. No quarrel ensues between the parents over the dowry, but say 30 years later, when children are born and the parents are no more, the question of succession to property occurs and then some other person challenges the marriage on the ground that dowry was paid. After, say, 30 years, the children of the marriage run the risk of being declared illegitimate because dowry has been paid. This is not the consequence I am willing to accept by providing that payment or non-payment should determine the validity of the marriage. We should check the payment of dowry in other ways by making it penal, by providing exemplary punishment, but we should not make dowry the essence of the condition of the marriage. Therefore, when the time comes, I would recommend the acceptance of Shri U. S. Dube's amendment No. 85, by which he seeks to add a clause 28A, which makes payment of dowry penal and imposes a penalty. It may be that we would have to increase the penalty in order to make it deterrent. That is a different matter, but the point is that dowry should bear its own penalty and the consequences of payment of dowry must be felt by those who pay it, and by those who accept it, but not

by the children of the marriage or by parties who perhaps were guiltless in the matter.

The other thing that I want to disagree with Shri Chatterjee about is the raising of the age. If I may say so with respect, Shri Chatterjee has confused the age of marriage with the desirability of at what age marriage should be contracted. The sole determinant of the age of marriage should be the fitness of the party to consummate the marriage. The question is whether in our country, in our climate, a boy becomes fit to consummate a marriage at 18 and a girl becomes fit to consummate a marriage at 15. There is no doubt that they become fit. Whether they should be married at that age or not is a different matter, but for the purpose of determining the minimum age of marriage, the only consideration should be their ability to consummate the marriage, because otherwise many complications might arise. Two parties may be in love and if they are not allowed to marry when they are able to marry, all sorts of complications may arise. Therefore, as regards prescribing the minimum age of marriage, we should only have regard to this consideration.

It is a social matter whether people should marry early or not or whether they can consummate it; whether they should marry without understanding the obligations of marriage—these are quite different and these should be dealt with as a question as social movement and as a question of convincing people in society about the desirability of certain things. Therefore, I would oppose Mr. Chatterjee's suggestion regarding the raising of the age of marriage.

The last point is about *saptapadi*. Mr. Chatterjee had opposed the idea of making this optional. I do not see how anything else could have been done. *Saptapadi* is a thing which does not apply to everyone. Where it applies, clause 7 provides that marriage is complete on taking the seventh step. Shri N. C. Chatterjee and myself may be governed by the rule of *saptapadi* when we marry according to the Hindu system. Therefore, in our cases, marriage becomes complete as soon as the seventh step is taken. If the seventh step is not taken, marriage does not become complete. Therefore, where *saptapadi* exists there is complete recognition of *saptapadi*. What he wants is that this custom should be extended to everyone else—even to those who do not accept *saptapadi* as an essential requisite of marriage. That is a thing which we cannot accept because customs wherever they are should be respected in the matter of marriage and so *saptapadi* should be optional—optional in the sense that it should apply only in those cases where the custom exists.

Reverting back to the question of dowry, I would urge upon the Government to fulfil a longstanding promise. You will remember that we had brought forward from our Party a Private Member's Bill. Shrimati Renu Chakravartty had brought forward a Bill and others also had brought forward bills to restrain dowry. When these were discussed the Law Minister, Shri Biswas, gave a promise that the Government themselves would bring forward a Bill to penalise the payment and acceptance of dowry. That promise has not been kept. Therefore, I would urge the Minister to fulfil that promise either by bringing forward a Bill within a specified time—I would not say either 'within a reasonable time' or any such kind of time. I want a date to be specified by the Minister so that by that time this kind of a Bill could be brought forward or to accept the amendment of Shri U. S. Dubey or any other amendment or an amendment which the Minister himself can propose to make the giving of dowry penal.

I beg to move:

(i) In page 4, line 9, *for* "eighteen years" *substitute* "twenty-years"

(ii) In page 4, line 9, *for* "eighteen years" *substitute* "twenty one years"

(iii) In page 4, line 10, *for* "fifteen years" *substitute* "sixteen years"

You will see that by my amendment No. 3, I want to raise the marriageable age of a boy from 18 to 20 years. By amendment No. 28 I want to raise the marriageable age of a bridegroom from 18 to 21 and by my amendment No 29 I want to raise the age of the bride from 15 to 16 years.

You will see that the Joint Committee had fixed the marriageable age of the bridegroom at 21 years and that of the bride at 16 years But the Rajya Sabha has again lowered down this.

Mr. Deputy-Speaker: The age of consent is 15—is it not? If the age of consent is 15 and the marriage ought to be protracted till 18, what happens? Without marriage they consent.

Shri Dabhi: My simple question is this. Is a boy of 18 fit enough to be a father? Is a girl of 15 able to discharge all the responsibilities of motherhood? Are they in a position to maintain their children? If the answers to these questions are in the negative, then it logically follows that the ages of both the boys and girls should be raised to some extent. It is an irony that those persons who call themselves progressive are at least as regards this question is concerned conservative when compared to our ancient people. Our progressive people including our sisters do not want to raise the age of the girl even to 16. But let us hear what our ancients say on this question. In the *Atharva Veda* there is this small verse:

ब्रह्मचर्येण कन्या युवानं विंदते पतिम्

—अथर्व वेद ।

It means that a girl should marry a young man after she had led a celebate life. Can we ever imagine that a girl of 15 can be said to have led a celebate life. But I do not only depend upon the *shastaras;* I have with me the authorities of our great physicians. This is what *Sushrut* says:

पंचविंशे ततो वर्षे पुमान् नारी तु षोडशे ।
समत्वागतवीर्यौ तौ जानीयात् कुशलो भिषक् ॥

—सुश्रुत

He is not an ordinary phyisician but a famous physician—Sushuruta.

Shri Nand Lal Sharma (Sikar): That is for sexual intercourse and not for marriage.

Shri Dabhi: The age of a boy must be 25 and that of a girl must be at least 16. They give the reason why this should be the proper age He says:

ऊनषोडशवर्षायाम् अप्राप्तः पंचविंशतिम् ।
यधा धत्ते पुमान् गर्भं कुक्षिस्थः स विपद्यते ॥
जातो वा न चिरंजीवेद् जीवेद् वा दुर्बलेन्द्रियः ।

If a boy of less than 25 years begets a child and a girl who is less than 16 years begets a child, then the child would either be still-born or if it is born would be *durbala* (a weakling) and then again he may not live long. From the physical point of view also, it is absolutely necessary that we must raise the age of both the boys and girls. This is another very cogent reason why the marriageable ages of boys and girls should be raised.

There is still another reason. Our population is increasing at an alarming pace. Our Census Commissioner tells us that before 1981 we would be from 360 millions to 630 millions.

1 P.M.

And there would be no food for all these mouths to be fed. To check this alarming increase in popu-

lation we think of family planning, artificial means and contraceptives and other things, which not only destroy the physique of the parties concerned but also the morals of the people. So, for this purpose, we want to raise the marriageable age of boys and girls which people want to oppose.

I want to quote a few figures because the stock argument against this raising of the marriageable age of boys and girls is that though it is quite desirable that the marriageable ages should be raised, they say where is the sense in raising the ages when the Sharda Act itself has been a dead letter? I have never believed that the Sharda Act has been a dead letter. I do not merely depend on conjectures. I have with me a few figures from the Census Report itself. This is what is said at page 183 of the Census of India, 1951, Volume I, Part I A. It shows that the number of births during the years 1931—40 was 753 lakhs and that during the years 1941—50, the number was reduced to 680 lakhs. This is what the Census Commissioner himself says at page 190, regarding this decrease in birth:

> "There is little doubt that, where there are real ups and downs in the birth rate, the principle operative clause has been the changes in the age-sex structure raising in the manner just described. .....It is not impossible that the average age of marriage of girls may have risen somewhat and caused this net resultant drop. The rise in the age of marriage may have come about, as a result of the Child Marriage Restraint Act of 1929."

I only thought I would give a few figures from the Census Report.

Mr. Deputy-Speaker: The hon. Member is taking away all the time.

Shri Dabhi: In the All India Census, Paper No. 7—Subsidiary Tables, at pages 200-203 you will see that during the year 1941 in U.P. the number of married persons—females—up to the age of 14, per thousand persons was 109 and it was reduced to 101 in 1951; in Bihar, it went down from 130 in 1941 to 101 in 1951, in Assam from 50 to 30, in Madras, from 50 to 28, in Bombay from 97 to 60 and in Travancore-Cochin from 8 per thousand to 1.4. Similarly, with regard to males also, from 1941 to 1951, the number per thousand of married persons up to the age of 14 has considerably reduced.

Lastly, with regard to some of the amendments that I have moved and others that have been moved with regard to the dowry system.....

Mr. Deputy-Speaker: Others have spoken about it. I cannot give all the time to one single hon. Member. I have given him enough time.

Shri Dabhi: I will take only one minute more.

Mr. Deputy-Speaker: Why not hon. Members distribute the various topics so that some of them may speak on particular topics and so on?

Shri Dabhi: I myself have moved an amendment to the clause.

Mr. Deputy-Speaker: I have given him too much of time. He may resume his seat. The hon. lady Member may speak.

श्रीमती शिवराजवती नेहरू (जिला लखनऊ—मध्य) : उपाध्यक्ष महोदय, श्री चटर्जी ने लड़की की एज के सम्बन्ध में जो कहा है कि वह २१ वर्ष न हो कर १८ वर्ष होनी चाहिये, उस के सम्बन्ध में मेरा विचार है कि १५ वर्ष की जो एज रखी गई है वह ठीक है, क्योंकि यह कोई खाली शहरों का ही सवाल नहीं है, न किसी एजुकेटेड लड़की का ही सवाल है। यह कानून देहातों में रहने वाले ग्रामवासियों के लिये बनाया जा रहा है, हिन्दुस्तान भर के लिये बनाया जा रहा है और ग्रामवासियों के लिये बहुत

[श्रीमती शिवराजवती नेहरू]

उन्नति की बात है अगर वह १५ वर्ष की एज में अपनी लड़कियों की शादी करने लगें, क्योंकि आज कल वहां पर ८ और १० वर्ष की लड़कियों की शादी भी हुआ करती हैं।

दूसरी बात यहां पर डावरी के सम्बन्ध में कही गई है। अगर डावरी का मतलब दहेज से है, तो दहेज को तो हम लोगों ने खुद ही बुरा कहा है। लेकिन हम दहेज उस को समझते हैं, कम से कम मैं तो उसी को समझती हूं, जो कि हमारे यहां करारदाद किये जाते हैं, यानी करारदाद कर के कि हम १५ हजार की शादी करेंगे, हम २० हजार की शादी करेंगे, तब शादी की जाती है, और अगर करारदाद का रुपया नहीं दिया गया तो उस के जो बुरे कान्सीक्वेन्सेज होते हैं, उन की वजह से दहेज को बुरा समझा जाता है। परन्तु यदि ऐसा कहा जाय कि माता पिता अपनी लड़की की शादी करें और शादी करने के वक्त उस को कोई जेवर न दें, कोई कपड़ा न दें, न नानी दें, न दादी दें, तो ऐसी शादी कम से कम मुझे तो अच्छी नहीं मालूम होती है। इस किस्म की बात को मैं दहेज नहीं समझती हूं। यह बिल्कुल दहेज नहीं है कि अगर कोई अपनी लड़की की शादी करता है और माता पिता उस को कपड़े अच्छे पहिनने को दें, जेवर दें या कपड़े दें। जिस की जितनी हैसियत होती है, वह उस के मुताबिक देता ही है। अगर इन्सान के पास पैसा है तो आप किसी कानून के जरिये उस को देने से रोक नहीं सकते हैं। इसलिये मैं कहना चाहती हूं कि यह ठीक है कि करारदाद नहीं होना चाहिये, जो करारदाद होते हैं कि हमें इतने की शादी चाहिये, या इतने की शादी चाहिये, शादी के पहले इतना रुपया रख दिया जाय, फलाने टीके में इतना रुपया आना चाहिये, वह नहीं होने चाहियें। परन्तु माता को अख्त्यार है, पिता को अख्त्यार है, नानी को अख्त्यार है, दादी को अख्त्यार है कि अगर वह अपनी पुत्री, नवासी या पोती को प्रेम से देना चाहे, तो वह दे सकती है। यदि अपनी मां, अपनी नानी, दादी और अपनी रिश्तेदार स्त्रियां ही लड़की को कुछ नहीं देंगी तो फिर किस को देंगी। मैं इस बात के बिल्कुल खिलाफ हूं जैसा कि चटर्जी साहब ने कहा कि डावरी का सिस्टम ही उड़ा देना चाहिये। मेरी राय तो यह है क्योंकि मैं पुरानी सभ्यता की पली हुई स्त्री हूं और मैं नहीं समझती हूं कि अगर किसी लड़की की शादी की जाय तो शादी के समय उस को बिल्कुल जोगिन बना कर पिता के घर से पति के घर भेजा जाय, न उस के पास कपड़ा हो, न जेवर हो और न बर्तन हों। इस प्रकार से लड़की को पति के घर भेजने से क्या अच्छा लगेगा। शादी तो एक खुशी की चीज होती है, इस तरह से पति के घर जाने से उस को क्या खुशी होगी? और उस घर में क्या खुशी होगी जिस में कि इस तरह की लड़की जायेगी?

इस लिये उपाध्यक्ष महोदय, जो कुछ आप के कानून में है कि १५ वर्ष की लड़की की शादी हो और २१ बरस के लड़के की शादी हो, इस को मैं बिल्कुल ठीक समझती हूं।

पंडित ठाकुर दास भार्गव : इस कानून में तो १८ साल है।

श्रीमती शिवराजवती नेहरू : मैं २१ वर्ष चाहती हूं क्योंकि १८ वर्ष लड़के के लिये जरा कम है क्योंकि उस को तालीम भी हासिल करनी पड़ती है, और १८ वर्ष की उम्र तालीम हासिल करने के लिये कम है, इतने अर्से में वह कम्प्लीट नहीं हो सकती है, इसलिये अगर आप लड़के की उम्र थोड़ी बढ़ा भी दें तो कोई बुराई नहीं है। अगर लड़के लड़की की उम्र में पांच वर्ष का भी फर्क होगा तो कोई अनुचित बात नहीं होगी। इसलिये मैं समझती हूं कि जो इस बिल में रखा गया है, वह उचित है। मुझे आशा है कि मेरे सुझावों पर विचार किया जायगा।

Mr. Deputy-Speaker: Pandit D. N. Tiwary. Two minutes, each.

Pandit D. N. Tiwary (Saran South): I have given amendments to several clauses.

Mr. Deputy-Speaker: The hon. Member is quick enough.

Pandit D. N. Tiwary: I will speak on the clauses generally.

उपाध्यक्ष महोदय : मैं तीन बातों पर जोर देना चाहता हूं । उनमें से एक का सम्बन्ध उम्र से है । जो लोग यह चाहते हैं कि लड़कियों की उम्र १८ बरस हो और लड़कों की उम्र २१ वर्ष हो, या तो वे हिन्दुस्तान की दशा और परिस्थितियों को नहीं जानते हैं या जान बूझ कर ऐसा कानून पास कराना चाहते हैं जो लागू ही न हो सके । इस प्रकार के कानून का तो परिणाम यही होगा कि लोग पुलिस की ज्यादती से और मुकदमे चलाने वालों की ज्यादती से तबाह हो जायेंगे । आप जानते हैं कि हमारे देश में तेरह, चौदह और पंद्रह बरस की उम्र में ही लड़के लड़कियों की शादी हो जाया करती है । अगर उस उम्र को बढ़ाकर अठारह और इक्कीस बरस तक ले जायें तो क्या होगा ? हमें यह बातें अवश्य ध्यान में रखनी चाहियें कि इस प्रकार का जो भी कानून बनेगा, उसको एक दिन या एक बरस में मनवाया नहीं जा सकता है । इस विषय में हमें जरा धीरे धीरे ही चलने का प्रयत्न करना चाहिये इस कानून के द्वारा तो पुलिस के हाथ में एक हैंडल मिल जायगा कि वह लोगों को तंग और परेशान करे । मेरा निवेदन है कि देश के हालात को जानते हुए—पार्लियामेंट के मेम्बरों की हालत को जानते हुए नहीं—आप इस कानून को पास करें और इस सम्बन्ध में इन लोगों को मद्दे-नजर रखें, जो मूर्ख हैं, पढ़े लिखे नहीं हैं, जो नहीं जानते कि अठारह या बीस बरस की उम्र से पहले शादी करने से क्या हानि होती है ।

एक बहुत आवश्यक बात इस बिल में नहीं है, जो कि होनी चाहिये थी । वह है डिस्प्रोपोरटी आफ एजेज इन मैरिज पर प्रतिबंध । इस बात की एक निर्धारित सीमा होनी चाहिये कि उम्र में कितना अन्तर हो । आप देखेंगे कि हमारे देश में अक्सर अनमेल विवाह होते हैं—१६ बरस की लड़की का ६०-७० बरस के बूढ़े से विवाह हो जाया करता है । मैं मानता हूं कि जो बूढ़े लोग हैं, वे रिजेन्ट करेंगे, लेकिन मुझे आशा है कि न्याय की दृष्टि से वे ऐसा नहीं करेंगे और न उनको ऐसा करना चाहिये ।

Mr. Deputy-Speaker: Are there any hon. Members who contemplate such marriages?

पंडित डी० एन० तिवारी : मेरा ख्याल है कि ऐसे अनमेल विवाहों को रोकना जरूरी है । हमें इस प्रकार की व्यवस्था करनी चाहिये कि डायवोर्स सम्बन्धी धारा और दूसरी फालतू धाराओं की जरूरत ही न पड़े । प्रिवेन्शन इज बैटर दैन क्योर । लड़के और लड़की की उम्र में ऐसा अन्तर रखा जाय कि हमारे देश में विधवायें कम हों । ऐसे लड़के लड़कियों की शादी हो जिनमें भिन्नता कम हो और डायवोर्स की जरूरत ही न पड़े । मैं ने पंद्रह बरस की सीमा निर्धारित की है । अगर लड़की १६-१७ साल की है, तो ३२ साल से ज्यादा उम्र का पुरुष उससे शादी नहीं कर सकता है । अगर ४० बरस की लड़की है, तो उससे ५५ बरस का मरद शादी कर सकता है ।

Mr. Deputy-Speaker: What is this seema?

पंडित डी० एन० तिवारी : लिमिटेशन ।

तीसरी बात यह है कि क्लाज ८ के सब-क्लाज (२) को निकाल देना चाहिये । हमारे यहां हिन्दुओं में जो मैरिज होती चली आ रही हैं, उनको रजिस्टर्ड करने की जरूरत नहीं पड़ती थी और न आज पड़ती है । लेकिन इस बिल में एक धारा रख दी गई है कि अगर प्रान्तीय सरकारें चाहें, तो मैरिज का रजिस्ट्रेशन कम्पलसरी हो सकता है । यह बात गलत है । जो सब-क्लाज (१) है, वह आप्शनल है । उसको अगर आप चाहें तो रख लीजिये । लेकिन सब-क्लाज (२) हिन्दुस्तान की आबो-हवा के लायक नहीं है । आप जानते हैं कि हिन्दुस्तान के देहात में ऐसे लोग रहते हैं, जो गरीब हैं जो रजिस्ट्रेशन-फीस के दो, चार, आठ आने भी देने

[पंडित डी० एन० तिवारी]

में असमर्थ हैं। इस कारण बहुत से लोग रजिस्ट्रेशन करवाने ही नहीं जायेंगे और उन पर मुकदमे चलने लगेंगे। उन लोगों के हालात देखते हुए और यह भी देखते हुए कि आज तक हिन्दुस्तान में ऐसा एक भी केस नहीं आया है, जिसमें किसी ने यह कहा हो कि मैं ने अमुक से शादी नहीं की।

एक माननीय सदस्य : आया है।

श्री चू० एम० त्रिवेदी : किसी ने सपना देखा होगा।

पंडित डी० एन० तिवारी : हजारों शादियां हिन्दू पद्धति के अनुसार होती रहती हैं। उनमें डिवोर्सन किया गया होगा, छोड़ दिया होगा, लेकिन कभी किसी ने कोर्ट में जा कर प्लीड नहीं किया होगा कि मैंने शादी नहीं की। तो फिर इस धारा की क्या जरूरत है? किस मंशा की पूर्ति के लिये यह धारा जोड़ी जा रही है? धारा में लिखा है कि :

> (1) For the purpose of facilitating the proof of Hindu Marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner..... etc.

हिन्दू पद्धति के विवाह में प्रूफ की जरूरत नहीं पड़ती है। सब जानते हैं कि इस प्रकार के मुकदमे हमारे यहां नहीं होते हैं।

सब-क्लाज (२) में लिखा है :

> (2) Notwithstanding anything contained in sub-section (1) the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory.....

सरदार हुकम सिंह : माननीय सदस्य पुरानी शादियों का जिक्र कर रहे हैं कि किसी प्रूफ की जरूरत नहीं होती है, क्योंकि गांव वाले सब जानते हैं और कोई इन्कार नहीं करता है कि मैं ने शादी नहीं की। अब गांव में कौन शादी कराने जायगा?

पंडित डी० एन० तिवारी : अब भी गांव में ही शादियां होंगी। सरदार हुकम सिंह की शादी चाहे शहर में हुई हो।

सरदार हुकम सिंह : मेरी शादी तो कब्र में होगी।

पंडित डी० एन० तिवारी : मैं व्यक्तिगत रूप से सरदार हुकम सिंह को नहीं कह रहा था। उनकी तरह पढ़े लिखे लोगों की शादी चाहे शहरों में हो सकती है, लेकिन गरीबों की शादी, देहात के रहने वालों की शादी, कभी शहरों में नहीं होती है।

Shrimati Sushama Sen (Bhagalpur South): On a point of order, the hon. Member was on the Select Committee and he had full opportunities to discuss the whole thing. He should have appended a minute of dissent if he disagreed with anything; but he did not do so. Is it right now to take up much of the time of the House?

पंडित डी० एन० तिवारी : मैं सिलेक्ट कमेटी में जरूर था और उसकी डिस्कशन्ज में मैं ने क्या कहा और किस ने क्या कहा, यह कहने की इजाजत नहीं है और मैं कहना भी नहीं चाहता। मैं इस क्लाज के विरोध में वहां भी था और यहां भी हूं। मिनट आफ डिसेन्ट मैं ने इसलिये नहीं दिया कि अगर सब बातों के विषय में मिनट आफ डिसेन्ट दिया जाय, तो एक बड़ा पोथा हो जायगा। इसलिये यह कहना गलत होगा कि चूंकि मैं ने मिनट आफ डिसेन्ट नहीं दिया, इसलिये मैं इस समय कुछ नहीं कह सकता हूं। उपाध्यक्ष महोदय की इस बारे में रूलिंग देने की जरूरत नहीं होगी।

उपाध्यक्ष महोदय : अच्छा। The hon. Member must conclude. There are other hon. Members who have to speak.

पंडित डी० एन० तिवारी : I am concluding.

मैं ने इस समय तीन बातों के बारे में कहा है । एक यह कि उम्र को न बढ़ाया जाय, दूसरी यह कि एक क्लाज जोड़ दिया जाय जिसके अनुसार उम्र में भिन्नता पंद्रह बरस से अधिक न हो और तीसरी यह कि क्लाज ८ के सब-क्लाज (२) को हटा दिया जाय, नहीं तो लोगों को बड़ी दिक्कत होगी ।

Shri N. Rachiah (Mysore-Reserved-Sch. Castes): I very strongly support these clauses and the Bill *in toto*. This is a very important social measure ever introduced in our country.

Mr. Deputy-Speaker: The hon. Member will confine himself to clauses 3 to 8.

Shri N. Rachiah: Yes, I am confining myself to clauses 3 to 8.

Regarding clause 5, I have moved two amendments. Those are Nos. 294 and 301. These amendments seek to lower the age of the bride, particularly with reference to the bridegroom.

This social measure could have been introduced immediately after we got independence, because social inequality is the greatest hindrance to the progress of our country.

First, I want to pay my high tribute to the Prime Minister. I know most of the Members being conservatives in the Congress Party are not in favour of this measure and they have been opposing this bill for so many years, but Panditji has taken up the challenge to see that this measure is passed as early as possible in the best interests of Hinduism and democracy. He wants to see that the ideal of Gandhiji should be given effect to immediately. I have been seeing and hearing with great care and patience that many Members, not only from the Congress, not only from the Communist group but also from all groups who represent the orthodox class, have been opposing the Bill and its provisions. This is unfortunate. More than all these things, many Members particularly belonging to the orthodox caste, who want that casteism should go on the public platform, today have come here as the representatives of the poor masses in India, and they want casteism actually on the floor of the House. Last month Mr. Dabhi wanted caste removal only on paper. Today, this Hindu Marriage Bill seeks to abolish all castes.

Shri V. G. Deshpande: It does not.

Shri N. Rachiah: Even if it does not, at least there is provision to permit marriage between caste and caste, and if there is marriage between caste and caste, does it not amount to removal of castes? Should we not accept the challenge? These people who represent certain parties, go and say to the poor and ignorant masses on the public platform that the Congress is not doing this and that. At the same time, they come here and oppose this fundamental social measure which is very important in the life of Hindus. They referred to many scriptures and also Manu *dharma shastra*. It was written by one man called Manu. Was there not Hinduism before Manu? Because there was Hinduism this great man was born, and he has written these *dharma shastras*. They apply to orthodox castes only. There are certain good things in them. We certainly adopt them in the interests of Hinduism. But if there are bad things which would affect, which would kill, which would hinder the progress of many human-beings—the Hindus, why should we accept those principles? It is after Manu that we have lost our independence; because Manu created distinctions and hatred among Hindus. Hindus did not feel they were one, with the

[Shri N. Rachiah]

result that we lost our independence. Today, our Nehruji is there. He wants that all Hindus should be one and that there must be a feeling among the Hindus that they are one being governed by one Hindu Code.

Shri Nand Lal Sharma: On a point of order.

Shri N. Rachiah: We should be like brothers and sisters at least in future. If this Bill is not passed, I am sure in the next general elections, the masses will not be with the Congress, because Panditji has assured time and again and this measure is long overdue.

Shri Nand Lal Sharma: On a point of order.

Mr. Deputy-Speaker: What is the point of order.

Shri Nand Lal Sharma: The hon. Member's speech has nothing to do with the clauses concerned.

Pandit Thakur Das Bhargava: Why not?

Mr. Deputy-Speaker: He does not want any amendment to be moved. He wants all the clauses, 3 to 8, being progressive, ought to be accepted without any opposition. That is what he is saying.

Shri N. Rachiah: I certainly agree with your opinion, because this is a very simple Bill. When Christianity and Islam are converting Hindus to their religions, is it not a disgrace on the part of anybody who is Hindu to oppose this Bill and divide Hindus among themselves? It is really disgraceful. No true Hindu will commit this sin. So, if you are really a Hindu, I tell you that you should at least now feel that all Hindus should be governed by one Hindu Code with regard to conditions of marriage and other ways. These clauses 3 to 8 are very important. They deal with the conditions of marriage pertaining to Hindus.

Mr. Deputy-Speaker: The hon. Member had no opportunity to take part in the general discussion?

Shri N. Rachiah: We are living in a democracy. Democracy means equality. Liberty without equality is a dead thing. Social equality is the core of democracy. No religion teaches hatred. So, if we want to feel that there is real democracy, and if there is to be any social equality there must be unity among the Hindus and other classes of people. If there is to be any strength there must be unity. Our strength lies in our unity, and our unity lies in our mutual love, respect and mutual understanding, particularly among the Hindus. So, all Hindus who have been divided all these years must be brought under one code, and one code should govern us all as Hindus at least now. That is my point.

With regard to my amendment, I should like to make some observations. In any country, as a matter of fact.....

Mr. Deputy-Speaker: What is the amendment?

Shri N. Rachiah: Lowering of the age pertaining to the bride.

Mr. Deputy-Speaker: Lowering? Nobody has suggested.

Shri N. Rachiah: I want lowering of age, particularly with regard to the bride. If they raise the age of the bridegroom even to 20, I have no objection. But with regard to the bride, my friend who is a champion of the Sanatanists, knows that the Sanatanists in this country today want child marriage. Though there is the Sharda Act, I am sure it is not properly implemented and is not cared for. In this society where custom and usages are more rigid and more powerful, our people, particularly the innocent people, the backward classes and the Scheduled tribes people are accustomed to child marriage,

and today if we raise this age, what will be the fate of the poor man or woman who has got more female children to marry off? Today if we raise the age of the girl or the bride, I am sure the consequences will be considerably severe and it will affect the poor rural folk.

In every country, as a matter of fact, immediately after they got independence, they introduced compulsory education. For instance, in Egypt, where there is a military dictatorship, Col. Nasser assumed power in the year 1952. Today, every girl and boy is getting compulsory education. But today in India, though we have achieved our independence eight years back, we have not been able to introduce compulsory education in this country.

If we want to raise the age of the girl, what would be her fate? Shri Dabhi was saying that the age must be raised from 15 to 16. He belongs to the orthodox class. Every girl in that class is going to school or is being given education, even up to 25 or 30 years. They need not worry about marriage. When there is no compulsory education, when the children cannot get education, how can they spend their time? Supposing a girl reaches the age of maturity at the age of 11 and from 11 to 15 that girl has to be at home, without education, without employment, what about her fate? And moreover, the sooner the parent disposes of his daughter, the better it is for him, because with the poor income he gets in this country of ours where exploitation is so rampant, he cannot support his children for long before they are married off. So, unless and until compulsory education is introduced in this country, how can we introduce such a measure which would affect the rural folk, because all poor and illiterate people live in the rural areas. As such, I want particularly that the age of the bride must be lowered than what is in the Bill.

Mr. Deputy-Speaker: From 15 to 13?

Shri Venkataraman: I am afraid that can be done only by an amendment of the Child Marriage Restraint Act and not in this, because that is applicable to all sections of society, and the suggestion would be out of order.

Mr. Deputy-Speaker: The hon. Member feels that so far as Hindus are concerned, the age should be reduced to 13. Then automatically this will create an exception so far as that Act is concerned.

Shri Venkataraman: It will not.

Shri N. Rachiah: You have to take the feelings of the orthodox people also into consideration. In the rural area, the advanced classes, particularly the Sanatanists and other people all want child marriage.

Mr. Deputy-Speaker: Has the hon. Member given any amendment?

Shri N. Rachiah: Yes, amendments Nos. 294 and 301.

Even if there is any compulsory education introduced today, that will take at least ten years or fifteen years to see that all children are educated. So with regard to this particular clause, I feel that if this Bill is passed with the age as fifteen, it will affect the poor people in the rural areas. I strongly feel on behalf of the rural folk, the backward classes and the Scheduled Caste people that they will be harassed, because the police will immediately lodge a case when a marriage takes place, and there will be so many complications resulting in the suffering and ruin of the poor people.

I beg to move:

(i) In page 4, line 10, *for* "fifteen years" *substitute* "thirteen years"

(ii) In page 4, lines 17 and 18, *for* "eighteen years" *substitute* "fifteen years".

Shri Khardekar (Kolhapur-cum-Satara): I will be concerned mainly

[Shri Khardekar]

with clause 5, and I come to the question of age. I think the elders have shown a considerable sense of realism in lowering the marriage age. (*Interruption*). About 80 per cent of our population lives in the villages. Early marriage is the order of the day. A mature girl is more like a live coal on the father's head. Unfortunately, as far as the uneducated parents are concerned, to raise the marriage age now is to invite violation of the law. And you know, to compel obedience to its laws is the basis of all Governments, and to command respect for their laws is the glory of civilised governments. Early marriages were quite common even in Europe. I am sure you must have read "Romeo and Juliet" some years ago. Juliet's mother admonished Juliet when she was not quite willing to marry; not that she was averse to marriage, but she wanted her own Romeo. The mother said: 'Girls of 14, of your age, are mothers now'. People mature early —it is a known fact— in tropical climates. To say that a girl of 15 has not developed proper understanding or has not got enough of education to know her responsibilities in life will, I think, be making a mistake. In my opinion, great poets are the unacknowledged—though they ought to be acknowledged— legislators of mankind. Also they are somewhat of real prophets. See what Kalidas has to say about the natural cleverness of women.

स्त्रीनामाशिक्षित पटुत्व ममानिषीषु
संदृश्यते किमुत याः प्रतिबोधवत्या
प्रागन्तरिक्षगमनात्सवपत्यजात
मन्यैर्द्विजैः परमृताः खलु पोषयन्ति ॥

Mr. Deputy-Speaker: Does it have reference to the age?

Shri Khardekar: I wil read the translation.

Mr. Deputy-Speaker: I know.

Shri Khardekar: Even the cuckoo, as referred to here, has an instinctive knowledge. Their inborn cleverness is there. So the question of age does not arise.

As regards boys, I think the age of 18 is good. Catch the male young; otherwise the moment reason begins to dominate, probably he might escape. So when he is under the domination of emotion, he should be married.

As regards clause 5(ii), I have an amendment.

I beg to move:

In page 4, line 7, *omit* "an idiot or".

This particular word 'idiot' is rather a loose word. Besides, there are degrees of idiocy, as I could show you from works on educational psychology....

Mr. Deputy-Speaker: Congenital idiot.

Shri Khardekar: Nothing is said in the Bill about congenital idiot. If you take the dictionary meaning of the word 'idiot', it is 'a person deficient in mind, incapable of rational conduct'. Now, this particular discussion on Hindu marriage has shown that some people are not quite capable of rational thinking.

Mr. Deputy-Speaker: The hon. Member refers to speeches outside the House?

Shri V. G. Deshpande: No, he is referring to his own speech.

Shri Khardekar: Particularly my friends here have a very closed mind, not only a closed mind but a mind that was closed, locked and sealed thousands of years ago. And the best and the purest mind among them, Shri Nand Lal Sharma's, was locked three thousand years ago, but it was locked after putting in the best that was there up to that time. The other minds have been locked empty

Shri Dabhi: I move my amendments Nos. 3, 28 and 29 to clause 5. for all time. That is the whole trouble with these two friends Deshpande and Trivedi.

Shri V. G. Deshpande: If you keep your mind open, that is very dengerous. (*Interruptions*).

Mr. Deputy-Speaker: We are on the subject of idiocy.

Shri Khardekar: I have here the noble example of my friend, Shri V. G. Deshpande. Actually, when the question of marriage comes, when a man proposes or when a man is likely to marry or marries, it is obvious that emotions, feelings and so on—you might call it madness, but it is sweet madness—take possession of the mind and therefore, reason is bound to be a little behind. It would be difficult to say whether it is deficiency in mind or lack of reason, because there are degrees, as pointed out by some of the authors on psychology.

As regards clause 6, I have an amendment, No. 30.

I beg to move:

In pages 4 and 5, *omit* lines 30 to 41 and 1 to 4 respectively.

I want that the list of guardians should not go beyond the brother by full blood, because some of the distant relatives I do not mean all—would more or less like to convert their rights of guardianship into currency or money. That is all I have to say.

Pandit Thakur Das Bhargava: I beg to move:

(i) In page 3, lines 35 and 36, *for* "Save as otherwise expressly provided in this Act "*substitute*.

"Notwithstanding anything contained in any other law or any provision to the contrary"

(ii) In page 4, line 9, for "eighteen years " *substitute* "twenty years"

(iii) In page 4, line 9, *for* "eighteen years" *substitute* "twenty-one years"

(iv) In page 4, line 9, *for* "eighteen years" *substitute* "nineteen years"

(v) In page 4, lines 12, and 13, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

(vi) In page 4, lines 14 to 16, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

(vii) In page 4, line 18, *for* "has", *substitute* 'as well as the consent of the bride, have"

(viii) In pages 4 and 5, for lines 30 to 41 and lines 1 to 4, respectively, substitute:

"(f) the paternal uncle by full blood; as between paternal uncles the elder being preferred;

(g) the material grandfather;

(h) the maternal grandmother;

(i) the maternal uncle by full blood; as between maternal uncles the elder being preferred."

Provided that the bride is living with him and is being brought up by him;

(j) the brother by half blood; as between brothers by half blood the elder being preferred."

"Provided that the bride is living with him and is being brought up by him;

(k) the paternal uncle by half blood; as between paternal uncles by half blood the elder being preferred:

Provided that the bride is living with him and is being brought up by him."

(ix) In page 5, *omit* lines 3 and 4.

(x) In page 5, *after* line 25, insert:

[Pandit Thakur Das Bhargava]

"7A. *Results of marriage and mutual rights and obligations of the husband and the wife.*—(a) The Parties to the marriage shall live together as companions and be entitled to each other's society.

(b) The wife shall be entitled to be maintained by the husband.

(c) Both the husband and the wife shall be entitled to full conjugal fidelity to each other's mutual respect and affection and service of each other shall inform their relations.

(d) Both the parties shall jointly or severally be responsible for the right upbringing of the children from the marriage.

7B. *Rights of property.*—(1) In the absence of any contract to the contrary the parties to the marriage shall acquire joint interest in each others property as a result of marriage and all subsequent acquisition shall in the absence of clear intention to the contrary be presumed to be joint.

(2) The rights to properties jointly acquired at the time of marriage or subsequently shall be governed by the terms and conditions of any agreement entered into by the parties and in the absence of any specific contract both shall jointly manage, use and profit by the property.

(3) The husband and the wife shall be entitled to acquire, hold and dispose of their properties separately and have separate business.

(4) The wife shall succeed to all the properties in the husband's family along with the husband and after his death, if the marriage had not been dissolved during the life—time of the husband, the wife shall inherit the properties in her husband's family which her husband would have inherited if alive.

(5) The husband will also likewise succeed jointly with the wife in case the wife is entitled to succeed to any property from her father's family during the period of subsisting marriage.

(6) In case of remarriage of the husband or the wife all the properties which the husband or the wife got from each other or the families of each others spouse shall be forfeited to the husband or the wife and their respective father's family as the case may be.

(7) Any cause which furnishes a ground for judicial separation for divorce will be deemed to be ground provided for partition of the joint properties.

(8) The rights to inheritance to each other's property will be governed by the provisions of the Hindu Succession Act."

साहब, क्लाज नम्बर ४ पर मैंने अमेंडमेंट नम्बर १४८ दिया है इसके अलावा क्लाज नम्बर ५ पर मैंने १५४ और १५५ नम्बर के अमेंडमेंट्स दिये हैं। अपने अमेंडमेंट नम्बर १५१ में १८ वर्ष की जगह २१ वर्ष करावाना चाहा है। मैं अपना अमेंडमेंट नम्बर १५३ मूव नहीं करना चाहता क्योंकि मेरी राय में पन्द्रह साल की उम्र फिलहाल काफी है।

अपने अमेंडमेंट्स नम्बर १५४ और १५५ जो मैंने मूव किये हैं उनके बारे में मुझे यह अर्ज करना है कि क्लाज ५ में पार्ट (४) में जो यह शब्द हैं :

"unless the custom or usage governing each of them permits of a marriage between the two".

मैं चाहता हूं कि यह शब्द निकाल दिये जायें। किसी कस्टम या यूसेज की इजाजत न दी जाय। इसी तरह से मैंने आगे चल कर अपने अमेंडमेंट नम्बर १५६ के द्वारा गार्जियंस की मैरिज के वास्ते जो कंसेंट लेना जरूरी थी उसमें साथ में शादी के लिये ब्राइड की कंसेंट लेना भी जरूरी क़रार दिया है। पन्द्रह वर्ष की लड़की मैं समझता हूं काफी समझदार होती है और वह समझ सकती है और अपनी शादी के बारे में ठीक राय और माकूल राय दे सकती है और इसी वास्ते गार्जियंस के साथ साथ ब्राइड की कंसेंट भी लेने को कहा है। उस का लिहाज़ किस क़दर हो, यह दूसरा सवाल है, लेकिन उस की मर्जी जरूर पूछी जानी चाहिये।

इस के अलावा मैं ने कई एक नये मोशन्स का भी नोटिस दिया हुआ है जो कि क्लाज ७(ए) और ७(बी) के मुतल्लिक़ हैं। मैं ने नोटिस दिया हुआ है कि इन क्लाजेज को भी इस के साथ देखा जाय। इसी तरह से मैं ने एक एमेंडमेन्ट संख्या २२६ का नोटिस दिया है, जिस के अन्दर क्लाजेज ७(ए) और ७(बी) हैं।

मैं अब उन के बारे में मुख्तरसन अर्ज करना चाहता हूं। जहां तक कस्टम का सवाल है, मैं अर्ज कर चुका हूं, मैं उस को दोहराना नहीं चाहता, लेकिन मैं याद दिलाना चाहता हूं आनरेबुल ला मिनिस्टर साहब को कि कोडिफिकेशन का सारा बेसिस ही यह था कि जहां तक हो सके इन कस्टम्स को एलिमिनेट कर दिया जाय, और सारे देश के वास्ते एक युनिफार्म ला, युनिफार्म रूल बनाया जाय। जो कास्ट सिस्टम है उस को आप बुरी नजर से देखते हैं, इसी तरह से आप प्राविंशिय लिज्म को भी बुरी निगाह से देखते हैं, यह चीजें सारे देश में अलहदगी पैदा करती हैं, और इन की वजह से जो मुल्क के अन्दर वन ला और वन युनिट की टेन्डेन्सी है वह खत्म हो जाती है। अभी थोड़ा अर्सा हुआ आप ने एक और बिल पास किया, जिस को आप कहते हैं कि यूनिफार्म सिविल कोड के बेसिस पर है। उस में हम ने यह पास किया था कि जहां तक कस्टम और यसेज का सवाल उन दोनों (IV व V दफा ५) के बारे में पुरानी शादियों को जायज माना जायेगा, उन पर हम हाथ नहीं डाल सकते, लेकिन आइन्दा के वास्ते यह कर दिया कि कस्टम को सपिंडाशिप में आने की इजाजत नहीं दी जायेगी। चन्द महीने हुए जब यह डिसीजन यहां पर लिया गया और आज गवर्नमेन्ट इस हाउस के सामने ऐसा बिल पेश करती है जो कि उस डिसीजन के खिलाफ है। मेरे ख्याल से वह क़तई दुरुस्त नहीं है। इस के अलावा जो कोडिफिकेशन का असली मक़सद था, अगर आप हिन्दू कोड बिल जो पुरानी कार्यवाही थी उस को देखेंगे तो पायेंगे कि कई दिनों तक हम ने इस मामले पर गौर किया और तब इस नतीजे पर पहुंचे कि कोडिफिकेशन बिल्कुल बेमानी बात होगी अगर आप उस के अन्दर सारे हिन्दुओं को एक जुज में नहीं लाना चाहते। अगर यह बात दुरुस्त नहीं है तो आखिर क्या जरूरत थी कोडिफिकेशन की? हर एक प्राविंस के आदमी अपने अपने यहां अलग अलग ला बनायेंगे, हर एक बिरादरी अपना ला रखेगी और हर एक बिरादरी अपना अलग अलग कस्टम करेगी। अगर डाइवोर्स का कस्टम है तो डाइवोर्स रहेगा, अगर शादी का कोई कस्टम है तो वह भी रहेगा, इस तरह का क़ानून हो सकता है। मैं यहां पर उनके बरखिलाफ नहीं हूं जो कि डाइवोर्स के बरखिलाफ हैं, मैं अपनी गवर्नमेन्ट के View के बरखिलाफ हूं जो कि सारे बिल को सैवाटेज करना चाहती है। मैं इस बिल के अन्दर कोई ऐसी चीज नहीं देखता जो किसी के खिलाफ जाती हो, लेकिन अगर आप इस जगह किसी कस्टम को मानते हैं तो आइन्दा और भी कस्टम आप के सामने आयेंगे, इन्हेरिटेन्स के लिये कहा जायेगा कि वह हमारा कस्टम है, फिर दूसरी बात आ जायेगी, तीसरी बात आ जायेगी, उस में लोग जोर दे कर यह कहेंगे कि हमारे लिये कस्टमरी ला अलाहदा कर दिया जाय, क्योंकि सब से ज्यादा झगड़ा प्रापर्टी के

[Pandit Thakur Das Bhargava]

बारे में होता है। अगर आप कोडिफिकेशन करते हैं हिन्दू ला का तो कम से कम मोटी मोटी बातों में दखल देने की किसी को इजाजत न दें, वरना कोडिफिकेशन करने का कोई फायदा नहीं होगा।

इस के बाद मैं यह अर्ज करना चाहता हूं कि मैं कोई प्राविंशियलिज्म की वजह से नहीं कहता हूं, न मैं नार्थ इंडिया और साउथ इंडिया की वजह से कहता हूं। मेरी राय है कि जिन चीजों के बारे में अपर इंडिया के लोग कुछ रिश्तेदारियों को इतना खराब समझते हैं कि उन को बर्दाश्त नहीं कर सकते, और जिन को इतने अर्से के तजुर्बे ने बतलाया है कि उन की राय सही है, उन के बारे में साउथ इंडिया वालों को कुछ सॅक्रिफाइस करनी होगी। मैं यह अर्ज नहीं करना चाहता कि वहां के लोगों को अपने कस्टम अजीब नहीं हैं, कस्टम तो एक बहुत मीठा फल या जहर है, जो बचपने से हर एक शख्स के साथ चलते आते हैं, उन से सभी को मुहब्बत होती ही है, इसलिये कस्टम को छोड़ने में जरूर दिक्कत होगी, लेकिन इस को जानते हुए भी मैं अर्ज करना चाहता हूं कि चाहे हम कहीं पर भी हों, जब तक हम कुछ न कुछ सॅक्रिफाइस आल इंडिया बेसिस पर नहीं करेंगे, उस वक्त तक कोई यूनिफार्म ला नहीं बन सकेगा। मुझे अफसोस है कि मुझे यह कहना पड़ रहा है, लेकिन मैं अपील करता हूं कि सारे हिन्दुस्तान के लोग इस चीज के लिये एक दर्जे पर पहुंचें, एक अम्ब्रेला के नीचे हम आयें और जो चीज ऐसी है जो कि जेनेटिक्स के, हेरीडिटी और मेडिकल साइंस के खिलाफ है, उस को आप को छोड़ देना चाहिये। एजेज के बारे में अब झगड़ा नहीं रह गया है दूसरी चीजों में भी आप अपने ऊपर थोड़ा रिस्ट्रेंट करें और इस तरह की मैरेजेज जो होने लगी हैं, उन को बन्द कर दें, कम से कम आइंदा के लिये बन्द कर दें। हिन्दुस्तान के फायदे के लिहाज से, इन चीजों को मानने के लिये थोड़ी सी सॅक्रिफाइस करें तो मुनासिब होगा। अगर आप ऐसा नहीं करेंगे तो जो कुछ कानून आप ने बनाये हैं वह सब के सब खत्म हो जायेंगे।

मैं थोड़ा सा एज के बारे में भी अर्ज करना चाहता हूं। लड़की के बारे शारदा एक्ट में जहां उम् लाजिमी तौर से १४ बरस की रखी गई थी, लेकिन उस में एक दूसरे की मर्जी से और आप की इमदाद से हम ने उसे १५ बरस कर दिया था, और उस में ज्यादा देर नहीं लगी थी, उस वक्त मैं ने कहा था कि शारदा बिल में भी जो पैरिटी हम ने रखी थी वह एट दि प्वाइंट आफ पिस्टल रखी थी, लेकिन उस जमाने में हम इतना सिक्योर कर सके थे। लेकिन हम यहां पर इतना तो मानें कि लड़के की उम् २० वर्ष कर दी जाय, १६ कर दी जाय। मैं तो असल में यही चाहता था कि लड़के की उम् २१ रखी जाय। मैं नहीं मानता हूं कि १८ बरस की उम् में लड़का अच्छा बच्चा पैदा करने के लायक हो जाता है। मैं चाहता हूं कि जो लड़का औलाद पैदा करे उस की एज २० साल से कम नहीं होनी चाहिये। मैं तो यह फिजिकल कंसिडरेशन्स के मुताबिक अर्ज करना चाहता हूं कि १८ वर्ष के लड़के से बच्चा नहीं पैदा होना चाहिये। आप किसी जानवर को देखें, पौदों को देखें, इन्सानों को देखें, जब तक उम् पक्की नहीं होती तब तक उस को ब्रीड करने की इजाजत नहीं होती। जहां पर लड़की की उम् शारदा एक्ट में १४ थी उस को हमने १५ कर दिया। मैं भी इस को मानता हूं, जैसा कि हमारे और बहुत से भाइयों ने बताया कि, अगर १५ साल में शादी होगी तो बच्चा होने के वक्त वह अपने आप १६ साल हो जायेगी। मेडिकल साइंस जो है वह यही बतलाती है कि १६ साल की उम् जो है वह मदरहुड के वास्ते मुनासिब एज है। लेकिन अगर आप पैरिटी के लिहाज से देखें तो १४ साल की पैरिटी १६, १६ १/२ साल तक पहुंचती है। अगर आप १५ और १८ की पैरिटी रखेंगे तो उस से कोई फर्क पड़ने वाला नहीं है। लड़के और लड़की में कम से कम पांच बरस का फर्क उम् में होना चाहिये। लेकिन आप कुछ भी रखें मैं तो चाहता

हूं कि यह माँका आया हैं अगर आप लड़के की उम् में एक एक साल और बढ़ा दें, तो भी काफी हैं। अगर आप को २० साल अखरता हैं तो कम से कम १६ साल तो कर दें। १६ साल कर देने से भी किसी हद तक काम चल जायेगा और बच्चों पर बड़ा फर्क पड़ेगा। कम से कम फिजिकली हैल्दी बच्चे तो पैदा होंगे, इस तरह से हिन्दुस्तान के बच्चे मजबूत होंगे और अच्छे सिटिजेन बनेंगे। मैं इस में नहीं जाना चाहता कि लड़कियों की शादी की क्या उम् हो। कहीं पर १२ साल हैं, कहीं पर कुछ हैं। मुसलमान और हिन्दुओं के शास्त्रों में शादियों की कोई उम् ही नहीं थी। लेकिन हम लोगों ने न शास्त्र की परवाह की और न शरियत की परवाह की न ही शारदा एक्ट की परवाह की। हम ने वही उम् कायम रखी, जो हमें मुनासिब मालूम हुई। अंगरेजों के यहां उम् १२ बरस की थी शादियों की, हम ने उस का भी ख्याल नहीं किया। जब हम ने पहले इस तरह से किया तो इस के अन्दर भी जो कुछ अच्छी बात हो सकती हैं उस को हमें करना चाहिये।

जहां तक लड़की की रजामन्दी का सवाल हैं, मैं कोई भी शादी ऐसी नहीं चाहता, चाहे वह गांव में हो या गांव के बाहर हो, जिस में कि लड़की की रजामन्दी न हो। सारी उम् उस को खाविन्द के साथ रहना होगा, तो बड़ी ज्यादती होगी अगर उस से इस के बारे में न पूछा जाय। मैं इसे बहुत जरूरी समझता हूं, और लड़की को इस का हक होना चाहिये। उस के प्रिफरेन्स की जरूर कद्र करनी चाहिये, खुसखन उस लड़की के सम्बन्ध में जिस के मां बाप मौजूद न हों। सब से पहले तो उस लड़की की मर्जी होनी चाहिये, उस के बाद अगर उस के गार्जियन भी उस को मानते हैं तो वैल एंड गुड, अगर नहीं चाहते तो लड़की के प्रिफरेन्स को माना जाना चाहिये।

जहां तक गार्जियनशिप का सवाल हैं, मैं अर्ज करूंगा कि उस में मुझ को थोड़ा सा एतराज हैं। जिस तरह से गार्डियन्स बने हैं, वह मुझे पसन्द नहीं हैं। नाना और नानी की तरह पैटर्नल अन्कल भी लड़की में इन्टरेस्टेड होता हैं। इसलिये उस को भी ऐसा दर्जा देना चाहिये। इसलिये मैं ने १५७ नम्बर का एमेन्डमेन्ट दिया हैं। मैं इस में ज्यादा वक्त नहीं लेना चाहता। अब मैं आपकी तवज्जह अपने अमेंडमेंट २२६ की तरफ दिलाना चाहता हूं, जिसके मुताबिक दो नये क्लाजेज ७(ए) और ७(बी) बढ़ा दिये गये हैं। इस हाउस में शिकायत की गई हैं और एक नये मेम्बर साहब तशरीफ लाये हैं, उन्होंने भी शिकायत की हैं कि मैरिज बिल में खाविन्द और बीवी के हक्क और फरायज का कोई जिक्र नहीं हैं। चुनांचे मैं ने इस बारे में कुछ कोशिश की हैं—मैं नहीं जानता कि मैं कहां तक सफल हुआ हूं। मैं ने अपनी समझ के मुताबिक लिखने की कोशिश की हैं। उसमें पहले यह लिखा हैं :

> The parties to the marriage shall live together as companions and be entitled to each other's society.

इस बिल में "रेस्टीच्यूशन आफ कानज्यूगल राइट्स एंड जुडीशियल सैपेरेशन" के बारे में एक चैप्टर रखा गया हैं, उससे इस सब-क्लाज की मुताबिकत होती हैं। उसके बाद यह लिखा हैं :

> The wife shall be entitled to be maintained by the husband.

इस बिल में एलिमनी और मेनटेनेन्स के बारे में एक क्लाज मौजूद हैं। मेरे अमेंडमेंट का ताल्लुक भी उसी विषय से हैं। यह उसको काम्पलीमेंट करता हैं। फिर लिखा हैं कि :

> "Both the husband and the wife shall be entitled to full conjugal fidelity to each other's mutual respect and affection and service of each other."

Shri R. Venkataraman: How to enforce it?

पंडित ठाकुर दास भार्गव : बहुत सी बातें ऐसी होती हैं, जो एन्फोर्समेंट के लिये नहीं होती हैं। मैं ने इसलिये उनको दर्ज किया हैं, ताकि

[Pandit Thakur Das Bhargava]

लोग समझ सकें कि हमारे फरायज क्या हैं । हमारे कांस्टीट्यूशन में बीस डायरेक्टिव प्रिन्सीपल्ज मौजूद हैं, उनको कौन एन्फोर्स करेगा ?

एक माननीय सदस्य : सुप्रीम कोर्ट करेगा ।

पंडित ठाकुर दास भार्गव : वह नहीं कर सकता है । दैट इज एन्टायली रांग । कुछ बातों को आपने खुद एन्फोर्स किया है । आपने इस बिल के जरिये कनज्यूगल फाइडैलिटी को एन्फोर्स किया है । आपने यह प्राविजन रखा है कि अगर पति पत्नी में से कोई एडल्टरी के जुर्म का मुर्तिकब होता है, तो उसको छोड़ा जा सकता है ।

Mr. Deputy-Speaker: Is there any precedent for this? Have any statute matters which are merely directive or advisory in character been included?

पंडित ठाकुर दास भार्गव : कांस्टीट्यूशन एक्ट में किया हुआ है ।

Mr. Deputy-Speaker: Apart from the Constitution.

पंडित ठाकुर दास भार्गव : मैं ने इस बारे में सोचा नहीं है, वर्ना शायद मैं अर्ज कर सकता । फिर भी मेरा ख्याल है कि कुछ बातें ऐसी होती हैं, जिनको मानना लाजिमी होता है। लेकिन जिनके इनफ्रिंजमेंट के लिये कोई सजा नहीं होती है । आपने इस बात को एन्फोर्स किया है कि जो कनज्यूगल फाइडैलिटी को तोड़ेगा, उसको डाइवोर्स हो जायगा और मैरिज वायड हो जायगा---अगर एक दफा भी गैर-जगह सैक्सुअल इन्टरकोर्स हुआ, तो जुडीशल सैपेरेशन हो जायगी । मैं ने तो सिर्फ यह लिखा है कि वे दोनों एक दूसरे की रैस्पेक्ट करें, जब कि आपने लिखा है कि अगर क्रुएल्टी होगी, दैन दे विल बि सैपेरेटेड पैक्किल्कली । जो कुछ मैं ने लिखा है, वह सब आप के सारे बिल में पहले से ही मौजूद है ।

इसके बाद मैं ने यह लिखा है :—

> Both the parties shall jointly or severally be responsible for the right of upbringing of the children from the marriage.

हिन्दू शास्त्रों के मुताबिक शादी का एक मकसद औलाद पैदा करना है । जो कुछ मैं ने लिखा है, अगर उसमें कोई संग बात है, तो उसको निकाल दिया जाय और अगर जरूरत हो, तो कुछ एड कर दिया जाय---मुझे कोई एतराज नहीं है । मेरा मकसद तो सिर्फ यह है कि हर एक शख्स को मालूम होना चाहिये कि उसके फर्ज क्या हैं ।

मैं ने एक क्लाज ७(बी) "राइट्स आफ प्रापर्टी" के बारे में भी रखा है । यहां पर बड़े जोर शोर से कहा गया है कि डाइवोर्स का क्या फायदा है, जब तक कि औरतों को जायदाद में हिस्सा न मिले । कल आचार्य कृपलानी ने फर्माया कि औरतें डायवोर्स के लिये चिल्लाती हैं, लेकिन डायवोर्स में सबसे ज्यादा नुक्सान उनका ही होगा । मरद तो झट डाइवोर्स कर देंगे---औरतें बेचारी क्या करेंगी और कर के कहां जायेंगी ? औरतें तो एक होम और बच्चे चाहती हैं । कल भी किसी ने कहा था कि जब तक औरतें फाइनैन्शियली इंडिपेंडेंट नहीं होतीं, तब तक डाइवोर्स का कोई फायदा नहीं है । सवाल यह है कि औरतें फाइनैन्शियली इंडिपेंडेंट किस तरह हों । वे दो तरह से हो सकती हैं । सिवाय लखनऊ की सदस्या के सब लोग डावरी को बहुत बुरा समझते हैं ।

Mr. Deputy-Speaker: But they will be given as share in the father's property The woman or the husband who marries will have to wait until the father-in-law's death.

पंडित ठाकुर दास भार्गव : मैं अर्ज करना चाहता हूं कि एक बच्चा, जो दुनिया में आता है, वह कौन से प्रापर्टी राइट्स ले कर आता है---सिवाय हिन्दू फैमिली के बच्चे के ? जब तक बाप जिन्दा रहता है, तब तक बेटा इन्तजार करता है । हिन्दू आइडियल में बच्चे का जन्म

और औरत की शादी यकसां समझी गई हैं---उनको एक ही लेवल पर रखा गया हैं।

Mr. Deputy-Speaker: I was only suggesting that if giving a share to the daughter out of the father's property is decided, dowry will disappear. Now, it is not likely, for the reason that by the time the father-in-law dies he may leave nothing. The son or the son's wife may take away all the property and force him to execute a will, in which case every son-in-law will insist upon something to be paid in cash.

पंडित ठाकुर दास भार्गव : मैं अर्ज करना चाहता हूं कि मुझे और हर हैं, गरीबनवाज । अपर इंडिया में मैरिड लड़की को कोई हक नहीं मिलता हैं । अगर यह शर्त जबर्दस्ती लाद दी गई कि लड़की को जरूर हिस्सा मिलना चाहियें, तो उसका नतीजा क्या होगा ? बात यह हैं कि बाप मरता हैं बेटों के आर्म्ज में । वे उससे बिल लिखवा लेंगे और बेटी को कुछ भी नहीं मिलेगा । हावरी बंशक बन्द कर दीजियें, लेकिन यह जरूर ख्याल रखियें कि औरतों को कुछ नहीं मिलेगा, बल्कि उनकी शामत आ जायगी। यह औरतों के लियें उतना मुफीद नहीं हैं, जितना कि वह समझते हैं । मैं समझता हूं कि जब तक औरतों की फाइनेन्शियल स्टैबिलिटी नहीं होगी, तब तक यह मसला हल नहीं होगा । और फिर हिन्दुस्तान में मरदों की भी क्या फाइनेन्शियल स्टैबिलिटी हैं ? जब मरदों की स्टैबिलिटी हो जायगी, तब औरतों की भी हो जायगी । जनाबवाला, मैं अर्ज करना चाहता हूं कि ओरिजनली यह आपका प्रोवीजन था, जिसको आज मैं ने यहां रखा हैं । आपका ख्याल था कि जब शादी हो, तो औरत को खाविन्द की प्रापर्टी में हक मिल जाय । आईन्दा भी अगर खाविन्द किसी प्रापर्टी को सक्सीड करें, तो औरत भी सक्सीड करती जाय और वह खाविन्द की प्रापर्टी में को-पार्सनर हो ।

Mr. Deputy-Speaker: He suggests that as soon as a girl is married, she must become a partner in the husband's property.

Pandit Thakur Das Bhargava: Yes, Sir. This is what I am submitting.

मैं अर्ज करना चाहता हूं कि मैं इसके कान्सीक्वेन्सेज को अच्छी तरह से समझता हूं कि शायद इसकी वजह से कुछ लोग शादी ही न करें---इसलियें कि अगर हमने शादी की तो हमारी बीवी हमारी जायदाद में हिस्सेदार बन जायगी । इसी लियें मैं ने यह लिख दिया हैं कि अगर उनको कोई कन्ट्रैक्ट हैं कि हम शादी के बाद जायदाद में हिस्सेदार नहीं होंगे, तो वह कन्ट्रैक्ट बाइंडिंग होगा ।

That will be binding upon them. In the absence of the contract to the contrary, it shall be presumed that the woman is entitled to half the property and subsequent acquisition shall be presumed to be joint in the absence of clear intention to the contrary.

इसी तरह से मैं ने यह भी लिखा हैं कि अगर बीवी के खान्दान से कोई जायदाद मिले, तो उसमें खाविन्द का भी हिस्सा होगा । वे दोनों मुश्तर्का तौर पर जायदाद का इन्तजाम करेंगे, जब तक कि डाइवोर्स या जुडिशल सैपेरेशन न हो । उस सूरत में औरत को अख्तियार होगा कि वह अपनी जायदाद को अलग करा ले । इस प्राविजन से बढ़ कर डाइवोर्स के लियें और कोई चैक नहीं हो सकता हैं । हर एक आदमी महसूस करेगा कि अगर उसने बीवी को डाइवोर्स किया, तो उसकी जायदाद का आधा हिस्सा उसके हाथ से चला जायगा । यहां पर मैं यह भी बता दूं कि मैं डाइवोर्स का अमल में लाया जाना बिल्कुल नहीं चाहता हूं । मैं तो चाहता हूं कि यहां पर डाइवोर्स का कान्न होते हुए भी डाइवोर्स न हो और उसकी तरकीब यह हैं कि अगर मरदों की जायदाद में औरतों का हक होगा, तो मरद डाइवोर्स करने से पहले दस दफा सोचेंगे । यह बड़ी मुफीद प्राविजन हैं । इस वक्त तो इसका असर महसूस नहीं होता हैं, लेकिन जब सक्सेशन बिल हमारे सामने आयगा, तब महसूस होगा और हमारे वेंकटरामन् साहब इस के बारे में सीरियसली सोचेंगे ।

Shri Rane: This is a discussion for the Succession Bill.

पंडित ठाकुर दास भार्गव : मैं तो यह कहना चाहता हूं कि मैं ने जो कुछ लिखा हैं, न उस पर पहले गौर हुआ न ही अब गौर होगा । मैं चाहता हूं कि राइट्स एंड आबलिगेशन्ज आफ पार्टीज और राइट्स टु प्रापर्टी के मुताल्लिक यहीं तौर पर गौर किया जाय और देखा जाय कि इस के बारे में क्या किया जा सकता हैं । इसके अलावा मैं और कुछ नहीं कहना चाहता हूं ।

हमारे चटर्जी साहब ने फरमाया कि सप्तपदी सब पर लाजिम कर दी जाय । मैं जानता हूं कि कुछ लोगों में "आनन्द कारज" होता हैं और इसी तरह आर्य समाजियों ने अपना एक अलग तरीका अपनाया हुआ हैं ।

श्री बी० जी० देशपांडे : आर्य समाजियों में भी सप्तपदी होती हैं ।

पंडित ठाकुर दास भार्गव : वह तो किसी भी तरीके से हो सकती हैं, लेकिन आप तो उन लोगों को भी बांधना चाहते हैं, जिनमें सप्तपदी नहीं होती हैं । आप अपनी चीज दूसरों पर लादना चाहते हैं, जो कि इस बिल में नहीं हैं । मैं चाहता हूं कि इस बिल में सब को शामिल किया जाय, लेकिन सब की सेंरमनीज रहने दी जायें । जिस तरह आप करना चाहते हैं, उस तरह काम नहीं चलेगा ।

पंजाब में डावरी होती हैं । शादी के वक्त लड़की को कपड़े, फरनीचर और बरतन वगैरह दिये जाते हैं, लेकिन आम तौर पर इस तरह शादी नहीं होती हैं कि पहले तय हो जाय कि पंद्रह हजार ले कर शादी करेंगे । हम लोगों में अभी तक इतनी बुराई नहीं आई हैं । जब आ जायगी, तो हम में भी चटर्जी साहब की तरह फीलिंग्ज आ जायेंगी । मां-बाप लड़की को इन्हेरिटेंस का राइट नहीं देते हैं और न ही अपनी प्रापर्टी में से कुछ हिस्सा देते हैं—वे तो महज लड़की को कुछ चीजें दहेज की शक्ल में देते हैं । उनके पति को नहीं देते हैं ।

2 P.M.

वह लड़की और लड़के के कब्जे में रहती हैं और उन्हीं के पास वह जाती हैं । वह मां बाप के पास नहीं जाती । कई दफा तो जो डावरी दी जाती हैं वह बक्सों में बन्द कर के दी जाती हैं और लोगों को बाद में पता लगता हैं कि क्या कुछ दिया गया हैं । लोग भी कई बार यह देखने की कोशिश नहीं करते कि उन्हें यह पता लगे कि क्या कुछ दिया गया हैं । डावरी उस वक्त खराब होती हैं जब कि पहिले पैसे मांगे जायें और यह कहा जाय कि लड़की वाले इतना दहेज दें तो शादी हो सकती हैं । यह बहुत बुरी बात हैं । इसलिये इस के बारे में जो कुछ मेरी बहन, जो लखनऊ से आई हैं, ने कहा हैं उससे मैं सहमत हूं । मैं यह नहीं चाहता कि कुछ भी न दिया जाय ।

इतना कह कर मैं आप को धन्यवाद देता हूं ।

Mr. Deputy-Speaker: Shri Venkataraman.

श्री विभूति मिश्र (सारन व चम्पारन) : उपाध्यक्ष महोदय, मैं एक बात पूछना चाहता हूं । जितने भी यहां पर वकील लोग हैं उन सब को बोलने के लिये वक्त दिया जाता हैं । हम लोग भी पार्लियामेंट के मेंबर हैं । हम को भी बोलने का मौका दिया जाना चाहिये । अगर आप हमें बोलने का मौका नहीं देना चाहते तो हमें बता दीजिये ताकि हम बाहर जा कर बैठ जायें ।

उपाध्यक्ष महोदय : मुझे बताइये मैं क्या करूं ।

श्री विभूति मिश्र : हम सनातनी लोग हैं और हमें यह बिल बहुत हद तक एफेक्ट करता हैं । जनरल डिसकशन में हमें बोलने का मौका नहीं दिया गया । अगर अब भी हमें बोलने की आज्ञा नहीं दी जानी हैं तो हमें बता दिया जाये ताकि हम बाहर चले जायें ।

Mr. Deputy-Speaker: What can be done? I will ask the hon. Member to suggest to me what I should do. Shall I call hon. Members who have tabled amendments or give an opportunity to have a general discussion in

the clause by clause consideration also? What is it that can be done? As far as the amendments are concerned, I may call from this side and that side. One side opposes and another side supports.

Shri U. M. Trivedi: 10 Congressmen have spoken; all on that side.

Mr. Deputy-Speaker: Hon. Members may merely state their points instead of elaborating them enormously, in which case I can call many hon. Members. I do not know who is a Sanatanj and who is not.

श्री नवल प्रभाकर (बाह्य दिल्ली---रक्षित---अनुसूचित जातियां) : जो सदस्य एमेंडमेंट्स देते हैं और फिर जब वे उन पर बोलते हैं तो वे सपोर्ट करने के लिये बोलते हैं और उस में अपोज करने की कोई बात नहीं है ।

Shri U. M. Trivedi: We have to reply because we have been abused, Sir.

Mr. Deputy-Speaker: The total time allowed is 3 hours. One hour has already been taken away by clause 2. Then regarding clauses 3 to 8 there are as many as 75 amendments here. A number of hon. Members have tabled them. Can I call all the 75 Members?

Shri Bogawat (Ahmednagar South): Those who did not get a chance during general discussion should be given a chance now.

Mr. Deputy-Speaker: How can I carry in my memory as to who got a chance and who did not get a chance; whether the hon. Member has already spoken during the general discussion or not?

Shrimati Renu Chakravartty (Basirhat): Those who have.....

Mr. Deputy-Speaker: All right. Let one hon. Member answer another hon. Member and not put the trouble on me. Even if an hon. Member has spoken and he has tabled an amendment, he must be able to press his amendment. Therefore, it is a difficult job to get along. Every hon. Member wants to speak. Therefore, I appeal to hon. Members to restrict their speeches to two or three minutes and raise only those points that have not been stated before and any special argument the hon Member has got.

Shri Venkataraman: Sir, both Shri N. C. Chatterjee and my friend Pandit Thakur Das Bhargava wanted the deletion of the provision relating to the validation of marriages according to customary practices. Since this is a matter which vitally affects a large section of the community in South India, I crave the indulgence of this House to consider this aspect a little more carefully.

Shri Bogawat: The whole of Deccan also.

Shri Venkataraman: There are also other parts of India where customary marriages contrary to *sapinda* relationships exist. My friend Sardar Hukam Singh himself pointed out a case in the Sikh community where the cousins by brother and sister are allowed to marry. That is also a custom which is widely prevalent in South India. We are not writing on a clean slate. Particularly when we are legislating in a social field. We have to take into account the existing conditions and improvements that are possible to be effected with the least disturbance to community and society.

According to the Bill, as it is framed, if sub-clauses 4 and 5 are violated, the marriage becomes void. Is it the suggestion of my friend Pandit Thakur Das Bhargava and Shri N.C. Chatterjee, that by sitting here in this House and legislating that all marriages performed according to customary practices which do not conform to the *sapinda* relationship shall become void and nullify the whole series of marriage transactions which are taking place throughout the country? What have we done to educate the people in all corners of

[Shri Venkataraman]

the country about the necessity of having a marriage relationship according to *sapinda* relationship enjoined in the *Shastras* or otherwise? I think it would be a drastic measure to declare all marriages which are performed according to customary practices, but which do not conform to the *sapinda* rule, to be void. I strongly oppose that amendment of both Shri N. C. Chatterjee and Pandit Thakur Das Bhargava.

The next point which was raised by Shri N. C. Chatterjee was that the State Governments should not invest the courts with jurisdiction unless they are district courts or courts of original civil jurisdiction. In an exaggerated language, he said: "I do not want to give the power to State Governments to invest anybody with the authority of deciding cases of such magnitude and importance." Sir, State Governments, as the clause stands, are not invested with the authority of deciding or jurisdiction of deciding such important cases. The only extension which the State Governments are entitled to make is to invest jurisdiction in cases in any other civil court—that is to say, what we have in Madras, Andhra and other States, the District Munsiff's Courts. If you invest jurisdiction only in district courts, it will be very difficult for people living in far off villages to go all the way to the district headquarters. Therefore, it would be better, if the necessity or the occasion arises, to invest also courts like the District Munsiff's Courts which are the lowest in the civil judicial side, with the jurisdiction in these matters.

Then, as regards age, I am afraid, the proper thing to do would be to amend the Child Marriage Restraint Act rather than introduce it here because the Child Marriage Restraint Act applies to all the people in this country irrespective of caste or community. If you all feel that age of marriage should be raised, it should be raised for all people and not only to Hindus

Pandit Thakur Das Bhargava: That can be done subsequently. If we accept it here, we can subsequently change the Sarda Act for the whole of India.

Shri **Venkataraman:** My friend Pandit Thakur Das Bhargava who is very successful in piloting private Bills in Hindu Law reform can introduce another amendment to the Child Marriage Restraint Act.

Pandit Thakur Das Bhargava: For the last three years the Bill to amend the age is pending in this House. I have put in this Bill. My friend should join his efforts to mine.

Shri Venkataraman: My suggestion therefore, is that it is not right to make an amendment here. It would be proper to make an amendment cause in that case it may lead to little amount of conflict, as under the Child Marriage Restraint Act a marriage performed at the age of 18 and 15 will be valid while under this, unless it is in accordance with the provisions Pandit Thakur Das Bhargava wants, it would not be valid and this may lead to conflicts. Therefore, the proper thing, according to me, is to have an amendment to the Child Marriage Restraint Act.

Pandit Thakur Das Bhargava: Supposing it is accepted there, then we shall have to amend this again.

Shri Venkataraman: We need not do that. That will override the provision here. We can provide like that. We have done it before.

Then, there is another point which Shri Khardekar raised with regard to "idiot". This has been a favourite subject for some jest in this House. But, if you will kindly look into the decisions, the word "idiot" has been interpreted by courts to mean only congenital idiots and even in the case of congenital idiots if they beget children, the marriage is held to be

valid. I remember, Sir, in 1942, in Madras, in a case in the High Court, they held that where a marriage was concluded by the guardian between a congenital idiot and another and out of that marriage two children were born, that marriage was held to be valid notwithstanding the proof it was a case of marriage between a congenital idiot and another. Therefore, the interpretation in courts are fairly clear on this point and it would not lead to any great difficulty.

The other points have been answered by others and I thank you for the opportunity given to me.

श्री विभूति मिश्र : उपाध्यक्ष महोदय, मैं ने क्लाज ६ में अपनी एमेंडमेंट्स दी हैं और उन के बारे में अपने विचार आप के सामने रखना चाहता हूं और पाटस्कर साहब से प्रार्थना करता हूं कि वे उन्हें स्वीकार कर लें ।

Mr. Deputy-Speaker: What are the amendments?

श्री विभूति मिश्र In list No. 8, Amendment Nos. 224, 225, 226, 227 and 228.

I beg to move:

(1) In page 4,—
  (i) in line 28, *after* "brother" *insert* "or brothers"; and
  (ii) in lines 28 and 29, *omit* "as between brothers the elder being preferred"

(2) In page 4,—
  (i) in line 30, *after* "brother" *insert* "or brothers"
  (ii) in lines 30 and 31, *omit*, "as between brothers by half blood the elder being preferred";
  (iii) in line 32, *after* "him" *insert* "or them"; and
  (iv) in line 33, *add* at the end "or them"

(3) In page 4,—
  (i) in line 34, *after* "uncle" *insert* "or uncles"; and
  (ii) in lines 34 and 35, *omit* "as between paternal uncles the elder being preferred"

(4) In page 4,—
  (i) in line 36, *after* "uncle" *insert* "or uncles";
  (ii) in lines 36 and 37, *omit* "as between paternal uncles by half blood the elder being preferred";
  (iii) in line 38, *after* "him" *insert* "or them"; and
  (iv) in line 39 *add* at the end "or them".

(5) In page 5,—
  (i) in line 1, *after* "uncle" *insert* "or uncles";
  (ii) in lines 1 and 2, *omit* "as between maternal uncles the elder being preferred";
  (iii) in line 3, *after* "him" *insert* "or them"; and
  (iv) in line 4, *add* at the end, "or them".

यह जो एमडमेंट्स मैं ने पेश किये हैं इन में लिखा है कि कौन कौन शादी करने के बारे मैं स्वीकृति देने का अधिकारी हो सकता है । मैं ने, जो यहां पर "ब्रदर" का शब्द इस्तेमाल किया है, उसमें कुछ सुधार किया है और कहा है कि उसके आगे "और ब्रदर्स" शब्द जोड़ दिये जायें । इस सम्बन्ध में मैं यह कहना चाहता हूं कि जहां तीन चार भाई होते हैं तो कई बार ऐसा होता है कि वह लड़की बड़े भाई के पास रहती है, कई बार छोटे भाई के पास और कई बार मंझले भाई के पास । जब उस का बाप मर जाता है तो कई बार ऐसा होता है कि जिस भाई के पास वह रहती है वह भाई उसकी शादी के सम्बन्ध में जिम्मेवार होता है । जब वह भाई ज्यादा पैसे वाला नहीं होता है तो वह चाहता है कि उसकी बहन की शादी किसी गरीब के घर हो जाये । बड़ा भाई या छोटा भाई या मंझला भाई अगर वह खुशहाल है वह अपनी बहन की शादी किसी अच्छे घर में करना चाहता है । उन्होंने उसमें दिया है कि बड़े भाई की राय से की जाय, इसको मैं हटा देना चाहता हूं । सब भाई बराबर हैं यह मेरा सिम्पल अमेंडमेंट है । इसी तरह मैं ने अपने एक दूसरे अमेंडमेंट में चाहा है कि जो उसके चाचे हैं या तो सौतेले भाई हैं उनकी राय लेकर शादी की जाय । यह मेरे बिलकुल सिम्पल अमेंडमेंट हैं । ऐसा भी कभी ऐसा भी मौका आ सकता है कि बड़ा भाई कभी कभी अपनी बहन को बेच दे, लेकिन जो उस

[श्री विभूति मिश्र]

लड़की का छोटा भाई होता है, वह खुशहाल है और वह अपनी बहन को नहीं बेचना चाहता और छोटा भाई अपने जेवर आदि गिरवी रख कर बहन का कन्यादान कर देगा । इसलिए मैं चाहता हूं कि माननीय विधि मंत्री मेरे अमेंडमेंट को क़बूल कर लें,वह एक बहुत साधारण और व्यवहारिक संशोधन है । जो क़ानून को ड्राफ्ट करते हैं वह दिल्ली शहर में रहते हैं, वैसे तो वह बड़े क़ानूनदां होते हैं लेकिन उनको गांवों की व्यवहारिक बातों का पता नहीं रहता और वह वहां की स्थिति को नहीं समझते और वह जानते नहीं कि वहां शादी कैसे होती है ।

दूसरा मेरा अमेंडमेंट नम्बर २३२ है जो कि क्लाज ८ पर है । क्लाज ८(२) में है कि हर एक को शादी रजिस्टर करानी पड़ेगी और जो कोई शख्स इस आज्ञा का उल्लंघन करता हुआ पकड़ा जायगा उसको पच्चीस रुपये जुर्माना देना होगा अब मैं अपने मंत्री महोदय को चुनौती देता हूं कि वह गांवों में चल कर देखें और सर्वे करायें कि वहां कितने लोगों के पास जुर्माना देने के लिए २५ रुपये हैं । क़रीब ८० प्रतिशत लोग गांवों में आपको ऐसे मिलेंगे जिनके पास जुर्माना भरने के लिए २५ रुपये नहीं निकलेंगे और ऐसे गरीब लोगों के वहां शादियां कैसे हो सकेंगी । आज वे बेचारे निमन्त्रण देते हैं उनके संबंधी गल्ला, दूध, दही, चूड़ा आदि जुटा कर न्योता देते हैं और शादी हो जाती है लेकिन इस वर्तमान धारा से तो रजिस्टर न कराने पर उसको २५ रुपये जुर्माना देना पड़ेगा । क़ानून तो सब की दृष्टि से और व्यवहारिक दृष्टि से बनाना चाहिए । और इस नाते मैं मांग करूंगा कि क्लाज ८ की (२) धारा को एकदम उड़ा देना चाहिए, यह धारा अनावश्यक है । अब आप ही बतलाइये कि जहां मैं रहता हूं वहां से रेलवे स्टेशन क़रीब २५ मील दूर है और रजिस्ट्री का आफिस भी २५ मील के फासले पर है । अब मेरे गांव के गरीब लोग जो अपने लड़कों या लड़कियों की शादी करते हैं वह शादी को रजिस्टर कराने के वास्ते २५ मील का फासला कैसे तय करेंगे, उसके लिए वह कहां से पैसे लायेंगे और अगर शादी नहीं रजिस्टर कराते हैं तो जो पच्चीस रुपया जुर्माना होगा, वह कहां से लायेंगे ? उन बेचारों के पास शादी करने को तो पैसा होता नहीं है, खेती करते हैं और थोड़ा मन दो मन अनाज दे दिवा कर अपने लड़के और लड़कियों की शादी कर लेते हैं, वे यह जुर्माना देने के लिए कहां से पैसा लायेंगे ? हमारे ला मिनिस्टर तो पुराने कांग्रेसी हैं और वह तो गांवों की हालत जानते होंगे.....

श्री नंद लाल शर्मा : २५ रुपये तो हमने करवाया है उन्होंने तो पहले ५०० रुपया जुर्माना रक्खा था ।

श्री विभूति मिश्र : आपको धन्यवाद है । अभी पंडित ठाकुर दास भार्गव ने कहा कि मैरिज की ऐज बढ़ा देनी चाहिए, लेकिन मैं उनसे इसमें सहमत नहीं हूं, ऐज बढ़ाने के जमाने गुजर गये । आज मनु, याज्ञवल्क्य आदि आज का काल नहीं है, बहुत छोटी उम्र में लड़के और लड़की मैच्योर हो जाते हैं । गांधी जी ने अपने लेखों में सनातन धर्म के बारे में क्या लिखा है, उसको अगर आप पढ़ें तो मेरी बात आपकी समझ में आ जायगी । मेरा ख्याल यह है कि अगर आप ऐज बढ़ा देंगे तो करप्शन ज्यादा बढ़ जायगा । मनु और याज्ञवल्क्य का वह प्राचीन काल दूसरा था जब ऐज बढ़ाना जरुरी समझा गया था, आज हालात बिलकुल दूसरे हैं । आज कल लड़के और लड़कियां स्कूल और कालिजों में पढ़ते हैं औह कहीं कहीं साथ साथ पढ़ते हैं सिनेमा देखने जाते हैं और क्लब आदि सभाओं में साथ साथ जाते हैं, अगर बड़ी उम्र तक उनको शादी से अलग रक्खा जाय तो उनके बिगड़ने का बहुत खतरा रहता है, इसलिए आज के जमाने में उनकी जल्दी शादी हो जाना ही हितकर है क्योंकि इस तरह लड़के या लड़की पर अंकुश लग जाता है, कंट्रोल हो जाता है । इसलिए मैं समझता हूं कि १५ वर्ष और १८ वर्ष की आयु ठीक है और ऐज को

अधिक न बढ़ाया जाय । मैं प्रार्थना करता हूं कि मंत्री महोदय मेरे संशोधनों पर गम्भीरता से विचार करें, मेरे सारे संशोधन बहुत सिम्पल और व्यवहारिक हैं, और मैं चाहता हूं कि मंत्री महोदय मेरे संशोधनों को कबूल करें ।

Shrimati Renu Chakravartty: I shall take only two minutes to explain my view. I had pointed out about this age of marriage previously. Probably nobody will oppose raising the age of marriage to a higher age, because we feel that children should be born to parents who are older. At the same time when we legislate, we cannot do so in the abstract. I have always felt that social legislations are necessary, but they can only be implemented when there is wide public opinion. Otherwise, merely passing an Act and allowing it to remain a dead-letter, is useless.

It is in that context I feel that even the age specified in the Child Marriage Restraint Act has not yet been implemented in practice. I am absolutely at one with some other Members who said that in the villages you see children getting married at a young age, a girl getting married at the age of eight, ten or twelve. Therefore, if we even see that the age prescribed by the Child Marriage Restraint Act is widely given effect to in the villages, that will be a good thing.

In that sense I think we should not at this stage immediately increase the age, however much we should like it as a principle. I will not go into other things, about family planning etc. which I think are not so important. But I do think that this question has to be viewed from the point as to what the situation now is.

On the question of dowry, I feel strongly about it. I do not know how Pandit Thakur Das Bhargava said that this thing is not weighing so heavily upon the women of Punjab. I do not want to say it is a general feature in Punjab and that every person gives it as a result of extortion. I do not know Punjab, but after I introduced the Restraint of Dowry Bill it is most surprising that I got far lesser letters from other States than from Punjab. From Punjab I got the largest number of letters asking me again and again "why is it you withdrew the Bill, why is it even today that Bill has not been brought on to the anvil of Parliament?" And I have carried on a long correspondence with Mr. C. C. Biswas and Mr. Pataskar asking them again and again what is going to be the fate of that Bill.

Sardar Hukam Singh (Kapurthala Bhatinda): Because they were already in favour of abolition of it.

Shrimati Renu Chakravartty: They gave me very pitiable stories. You should not make a light talk about it, because it pertains to the women of Punjab. Most pitiable cases were brought to my notice, how, because the money or whatever was wanted by the bridgegroom's family was not given to them, they were treated to extreme sufferings. The most shameful type of extortion went on and cruelty went hand in hand to the same extent. I will certainly send those gentlemen on to Pandit Thakur Das Bhargava and he may speak to them.

I do not want to argue the question of Punjab, but I do know in my province the amount of hardship that goes on in the matter of dowry. It is something that is unquestionable and almost all sections, whether they agree with the clauses of the Hindu Marriage and Divorce Bill or not, are agreed on this matter and they demand that there should be a Restraint of Dowry Bill. How it should be done and in what form it should be done is a thing to be considered but I would like that a separate Bill should be enacted. I do think it is not very simple and merely having one clause put in here or there will not cover all the cases that will come up. I am all in favour of giving daughter or sons-in-law that are coming into

[Shrimati Renu Chakravartty]

the family anything which the family can give out of their own generosity or out of their own desires. Certainly nobody will object to it. But actually what is happening today? I want to know why the family cannot give it to the daughters at any other time except at the time of contract of marriage? We have to take into consideration what is going on now in the country. Though the term that has been used is "dowry", you may call it "barter" or "purchase" for actually it is this purchase that is going on. Everyone knows the story of Snehalata which stirred the conscience of Bengal for a time when that girl committed suicide by burning herself because her family was too poor to give her away in marriage. Every home in Bengal knows Snehalata's death. Today some feel that this clause for restraint of dowry is something that will mitigate women getting some financial gifts from their parents. I would rather want that we do stand for the rights of women for having equal rights of inheritance. I have seen also the amendment No. 229 of Pandit Thakur Das Bhargava; we shall consider it certainly when the time comes in the Succession Bill with all seriousness as I regard it as a matter of succession. To bring it over here without having given full thought to the question will make it difficult for us. Without throwing it aside summarily, I believe that we should hold this over for consideration when we take up the Succession Bill.

One word about customary laws. I would say that people who have opposed this have opposed it on the ground of having a uniform law. There is no doubt that we want a uniform law, but do we want a uniform law so that those that are yet backward should be brought forward or do we want those who are already advanced to be pulled backward? There are certain specific cases that Pandit Thakur Das Bhargava has mentioned and if they are against public policy, then we should not allow such things. Any specific cases which you think are absolutely repulsive, may certainly be prevented. But on the question of divorce, if we do not allow to have their own customs which are often easier than those in the Bill in the circumstances of today, this Bill will bring more hardship on the villagers. Some of these are having it on the customary law now and we do not want to do anything which will create more hardships for them. That is why I oppose the amendment moved for the deletion of customary law from coming under the purview of this Bill.

Shri S. C. Samanta (Tamluk): I beg to move:

(1) In page 4, *after* line 10 *add*:

> "Provided that if the bridegroom is above 40 years of age, the age of the bride shall be above 25 years."

(2) In page 4, *after* line 19, *add*:

> "(vii) neither party being a widow or a widower shall marry another who is not a widower or a widow."

So much discussion on age of marriage was going on. I have given my amendment about the age of advanced persons in No. 220, which says "Provided that if the bridegroom is above 40 years of age, the age of the bridge shall be above 25 years." The other amendment reads:

> "Neither party being a widow or a widower shall marry another who is not a widower or a widow."

Mr. Deputy-Speaker: No widower shall marry a spinster.

Shri M. S. Gurupadaswamy (Mysore): Very progressive!

Shri S. C. Samanta: What we find is that a man of 60 years, nay, an octogenarian can marry a young

girl of 15 or 20. This is going on in our society and the society is not able to check it. It is a shame on our part though our scriptures have given no sanction to it. Now the convention is going on that wherever a man of 60 or 70 goes to marry a young girl, young people have come forward standing against it, but the society is not looking to it. It is a shame that you have to formulate a law now for the regulation of the Hindu Code.

The society was going on smoothly, but who is at the root of this disorderliness? Those who are at fault would not themselves come forward. Good things become bad and the old order changeth and now it is yielding place to new. In this changed order of circumstances, when we have accepted widow marriage, why should we not provide in this Act this provision which everyone of us feels very keenly.

Shri M. S. Gurupadaswamy: Not everyone of us.

Shri S. C. Samanta: My married friends here may take me to task because I want that as soon as a man becomes a widower, if he wants to marry at all, he must marry a widow.

Shri Raghunath Singh (Banaras Distt.-Central): Very good.

Shri S. C. Samanta: If that is very good, as my friend says, then I am not finding any example.

Shri M. S. Gurupadaswamy: But he did not mean it.

Shri S. C. Samanta: Ishwar Chandra Vidyasagar tried his best to introduce widow marriage and it was accepted, but how many widows are being married nowadays in the family? I accept it, but when there is a widow in my family, I will not allow her to be married. This is the condition. So, such stringent measures are coming before us. As the time is up, I expect that my amendments will be accepted.

Shri U. M. Trivedi: I have moved six amendments but as the time is running very fast, I would like to speak only on one amendment.

Shri Nand Lal Sharma: I would submit that the time be extended, especially as there are a number of amendments to clause 4 to be considered.

Shri U. M. Trivedi: I do not want to take up the time of the House. I would have even avoided speaking on this occasion, but for the fact that for the last two days my hon. friend Shri Khardekar is taking the opportunity of abusing the Hindu Mahasabha and the Jan Sanghwalas. I do not know what curious ideas Mr. Khardekar has got about the Jan Sangh. I find he is not in his seat. I would have presented him with a copy of the manifesto and would have shown to him that the Jan Sangh was at least more progressive than he claims to be. However, I do not want a certificate from Mr. Khardekar about it, but Mr. Khardekar should also realise that everything that savours of something against Hindu society or Hindu conception is not progressive. We are talking of being progressive. These are not what we call progressive in life.

Therefore, we have to consider this thing. If what we are aiming at by this law is real evolution, evolution must consist in doing those things which are good in the Hindu society and cutting off those which look bad. This must be judged from various principles. Because in the Semitic races a particular type of law obtains, it is considered that whatever is done by the Semitic people is good and therefore, we must adhere to their practices we should degrade ourselves from the stage of evolution we have reached and we must have some peculiar forms of marriage between brothers and sisters, as Mr. Venkataraman was pleading. In fact, we should stop them. We should not copy them. Here, we are proclaiming to the world at large

[Shri U. M. Trivedi]

that we are progressive, we want to evolve our society, we want to put it on a higher pedestal and still we are afraid of offending particular castes, particular people and particular tribes, and we do not want progress to be made. I, therefore, say that if we have got the conception of really evolving our society, then we must proceed not only cautiously, but in a manner which will induce the evolution of our society. With these words I commend my amendment No. 132 to clause 5.

Now, as my hon. friend Mr. Teja Singh was saying, most of the marriages among Hindus are performed according to sacramental rites with a desire to have children in the family, to have sons in the family. They sincerely believe in it. It is no use making a joke of it. It is no use thinking that you yourselves are progressive. Those people who consider themselves progressive can keep these ideas to themselves. Such ideas may be kept locked inside the brain of Mr. Khardekar and should not be allowed to come outside the brain. That would be enough for us. The present provision is like this—

> "that neither party has a spouse living at the time of the marriage.

The amendment I suggest is that—

> "provided that if the female spouse has expressed any declaration before a Magistrate of the First Class that she has consented to her husband having a second wife this condition shall not apply."

I moved this amendment with the full knowledge that it will not be liked by some friends who have been worked up in that particular direction. When this Bill had come before the House under the old name of Hindu Marriages and Divorce Bill, a hue and cry was raised by a huge block that we must have divorce by consent. After all the old woman is in the house; she has grown up in that family; she has lived with her husband; she loves her husband; she tolerates her husband. Unfortunately, she has not produced a child; perhaps she is ill, she is not keeping good health. Under this clause we make a provision to drive her out, to drive her out of the family, to get her divorced, to leave her without a shelter, to leave her without anybody to support her, to leave her without a proper person to look after her. Then you allow that man to remarry. I say I cannot allow this. Let her remain as the wife of the man; let her still remain under the shelter of that particular husband and with her willingness let there be a second marriage. That may be allowed under this law. That is why I press that this condition may be very clearly looked into. No harm will be done to the community at large. Have monogamy—quite true. We all believe in monogamy; let there be monogamy. But at the same time do not make this a child's play—to have divorce and throw out the woman and make her beg in the streets and then have another marriage and have no responsibility whatsoever about that.

Mr. Pataskar is an old man with sober ideas, expressing sober ideas all along. I am sure he will accept my amendment.

Shri Bogawat: I beg to move:

(i) In page 4, *after* line 6; *add*:

> "Provided that the husband who has his wife living can marry a second time with the consent of the first wife if the court thinks it necessary to allow a second wife"

(ii) In page 4, line 7, *after* "lunatic" *insert* "impotent".

Shri V. G. Deshpande: I beg to move:

In page 3,—

(i) in line 35, *for* "Over-riding effect of Act" *substitute;*

"Applicability of law now in force"

(ii) *for* lines 37 to 40, *substitute*:

"(a) all texts, rules or interpretations of Hindu law or all customs and usages as part of that law in force immediately before the commencement of this Act shall continue to have effect with respect to matters for which no provision has been made in this Act."

Pandit D. N. Tiwary: I beg to move:

In page 4, *after* line 19, *add*:

"(vii) where the disparity between the age of bride and bridegroom is not more than fifteen years."

Shri U. M. Trivedi: I beg to move:

In page 4, *after* line 6, *add*:

"Provided that, if the female spouse has expressed in a declaration before a magistrate of the first class that she has consented to her husband having a second wife, this condition shall not apply."

Shri V. G. Deshpande: I beg to move:

In page 4, *after* line 19, *add*:

"(vii) the difference between the ages of bride and bridegroom is not more than ten years and the bridegroom is older than the bride,

(viii) neither party is above the age of fifty."

Shri K. L. More: I beg to move:

(i) In page 4, line 9, *for* "eighteen years" *substitute* "twenty years"

(ii) In page 5, *omit* lines 22 to 25.

Sardar Iqbal Singh (Fazilka-Sirsa): I beg to move:

In page 5, *after* line 25, *add*:

"(3) Where both or one of the party to the marriage belongs to the Sikh religion, marriage may be solemnized by Anand Karaj (Sikh customary marriage ceremony)."

Shri Rane: I beg to move:

In page 5, *after* line 25, *add*:

"(3) Notwithstanding anything contained in this Act, no marriage after one year from the date of solemnization, shall be deemed to be invalid merely by reason of any irregularity in the performance or non-performance of any ceremonies of marriage.

A marriage shall be presumed to be solemnized, according to law, if both the parties to the marriage are major and admit the solemnization before the court."

Pandit K. C. Sharma (Meerut Distt.-South) I beg to move:

In page 5, *after* line 25, *insert*:

"7A. *Marital duties.*—(1) The wife is bound to live with her husband and to submit herself to his authority.

(2) The husband is bound to live with his wife and to maintain her."

Shri Bhakt Darshan: I beg to move:

(i) In page 5, line 27, *for* "may" *substitute* "shall"

(ii) In page 5, line 28, *for* "may" *substitute* "shall".

Shri Bibhuti Mishra: I beg to move:

In page 5, *omit* lines 32 to 39.

Pandit D. N. Tiwary: I beg to move: and I

In page 5, *omit* lines 3[illegible]n to the House. It

Shri Bhakt Darsh[illegible] In the Bombition was in-

[illegible]ber an occasion

(i) In page 5, [illegible] Bombay Assembly *substitute* "sh[illegible] favour of prohi-

[illegible]ter on there were

[Shri Bhakt Darshan]

(ii) In page 5, lines 33 and 34, *omit* "if it is of opinion that it is necessary or expedient so to do,"

(iii) In page 5, lines 35 to 37, *omit* "or in any part thereof, whether in all cases or in such cases as may be specified,"

(iv) In page 5, line 37, *omit* "where any such direction has been issued"

(v) In page 5, line 39, *for* "twenty-five rupees" *substitute* "one hundred rupees."

Mr. Deputy-Speaker: Shri Pataskar.

Shri V. G. Deshpande: Some more time should be given to clause 4, it has not been sufficiently discussed.

Shri Pataskar: Let me only tell hon. Members that they should not complain later that the points made by them have not been replied to. I have no objection to more time being given, but I also must have some time to reply to the points made.

Mr. Deputy-Speaker: The amendments have been treated as moved; some hon. Members have spoken. The hon. Minister will now reply.

Shri V. G. Deshpande: If ten more minutes are given some adjustment can be made.

Shri Raghunath Singh: Hon. Members who have moved their amendments should be given some time to speak.

Mr. Deputy-Speaker: Merely tabling an amendment will not entitle a like... to speak.
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tion. Wi **Deshpande:** But every
fore the Ho be discussed.
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block that we **Mr:** The House
consent. After all clauses 3 to
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Shri Pataskar: Though I may not be able to deal with every little amendment, if only hon. Members would hold their soul in patience with me, for a few minutes, I shall try to do my best within the limited time that has been left to me.

We are now considering clauses 3 to 8 and I shall try to discuss the points that have been raised with respect to each of these clauses serially.

Clause 3 deals with Definitions and the only important amendment suggested by Mr. Chatterjee was that there should be some change in the definition of a district court. I would like to bring to the notice of hon. Members that here "district court"

> "means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act."

I think this is a simple provision and there need be no disturbance over this.

Then, I think, there was some discussion with respect to the definition of "sapindas." Sub-clause (f) (i) of clause 3 says:

> "'sapinda relationship' with refrence to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;"

We have tried to avoid all complications that have arisen on account

of different forms of *Dayabhaga* and *Mitakshara* construction and this has been put in as simple a form as we could for the purpose of showing as to what are the prohibited relationships so far as marriage is concerned. Therefore, I do not think there is any change that is really needed and all that could be reasonably provided has been done, so far as clause 3 is concerned. Clause 4 relates to over-riding effect of the Act and I do not think there has been much discussion with respect to this clause also.

Then I come to clause 5. The main question that has been agitating the minds of several hon. Members is with respect to the age of the bride and the bridegroom. This subject has been so elaborately discussed not only on the occasion of the present Bill but also at the time of the Special Marriage Bill and in all places whenever there was an occasion for this and it is very difficult to arrive at any exact age which may please all sections of the House. I know the feelings of my hon. friend, Pandit Thakur Das Bhargava. He very strongly believes that the age of marriage should be increased. I know the efforts that he has been making during the last many years in the direction of social reforms of this kind. I fully respect his sentiments. But we have also our limitations. When we decide a matter like this we have to be guided not by any one rule but by the standard which will generally satisfy all sections. I find that this provision is consistent with what is laid down in the Child Restraints Act already. There have been hon. Members who have pleaded for the lowering of the age; there have been hon. Members who have pleaded for an increase in age Considering all these I feel that for the present it is better to go only as far as the Child Restraints Act goes and stop there. After all much can be said on either side and nothing can be deemed as a definite conclusion which would produce desirable or undesirable results. Therefore, I feel that the age that is mentioned there should be retained as it is.

Then I go to the next clause—conditions for Hindu marriage. The first is neither party has a spouse living at the time of the marriage.' My hon. friend, Shri U. M. Trivedi— he is not here—very passionately pleaded. In many hard cases when there is an old wife who is ill or who is unable to beget children, why do you not allow the man to marry second wife? I can understand the sentiments. As a lawyer I have come across such people who have come to me, after the Bombay Act was passed, and they said that they did not want to violate any law because they believed in fate. Some such hard cases cannot be avoided. Pass any law you like. Some hard cases are bound to arise. Therefore, to say that to meet such hard cases we should go on making exceptations would only result in nullifying the law. With all the sympathies for the hard cases that may arise, the best rule which our future society should observe is the rule of monogamy and I find that all hon. Members had supported it. On all such occasions we should try to do what we think to be in the interest of society as a whole. Therefore, inspite of the fact that there may be, for some time to come, hard cases I think that cannot be avoided because there cannot be any law in the administration of which there may be no hard cases whatsoever. It was very common to marry another woman if the first wife did not give birth to a child. People are likely to feel for this for some time till things are adjusting themselves and in course of time I think this will be the right thing.

Things have been changing and I do not find any opposition to the idea of monogamy in the House. It is something like this. In the Bombay State, when prohibition was introduced, I remember an occasion when in the Bombay Assembly everybody was in favour of prohibition. But later on there were

[Shri Pataskar]

some doubts: they began to ask: what about revenue losses. That means that the conscience has gone so far that there should be prohibition. It is something like that here; everybody agrees about monogamy but all the same, they say, do something for the hard cases. As a matter of fact that means that we have not yet inwardly adjusted ourselves to the idea of monogamy. I really want to respect everybody's sentiments whoever he may be but at the same time I am sorry to say that nothing can be done which will go against the very cardinal principles which underlie the present Bill.

I come to clause 6. It is a very simple clause and there has been some amount of misunderstanding in this. Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent shall be in the order specified therein. If they are of a major age, there is no problem. If at all consent is to be obtained and a person has to be married then we lay down who will be the guardians. My friend Shri Bibhuti Mishra calls himself a *sanatani*. I have also every right to call myself a *sanatani* as he. It is not a term which, one can think, is his own heritage. We have got our culture, etc. What is wrong there? We have said 'brother by full blood', 'brother by half blood; as between brothers by half blood the elder being preferred'. He wanted 'brothers.' I cannot understand his idea. I can assure him that he can take any counsel if he has no faith in the present Minister whom he probably does not regard to be a *sanatani* and this would include all the cases which he wants to cover because 'single' according to our law of interpretation includes 'plural'. Therefore, if there are brothers and they want to celebrate marriage nobody comes in the way. The only condition is that the elder brother should be preferred. Supposing both brothers begin to fight as to who should perform the marriage, then alone such a case would arise. Therefore, it need not agitate the hon. Members' minds in any way. What we are doing here will in no way interfere with the *sanatana* observances and rights which may be there.

श्री विभूति मिश्र : तो वे कोर्टों में जायेंगे और वकीलों—

श्री पाटस्कर : अरे भाई वकीलों के खिलाफ ही कहते जाते हो। जब तक लोग कोर्टों में जायेंगे तब तक उनको वकीलों की जरूरत जरूर महसूस होगी। आप इसका कोई दूसरा इलाज बता दीजिये हम वैसा ही कर लेंगे। हमेशा ही वकीलों के खिलाफ कहते रहना ठीक नहीं है।

The next is clause 7—about the ceremonies.

Sardar Iqbal Singh: One point about systems as this Bill is going to apply to the Sikh community also. In that case there is an amendment of mine on the system of ceremonies—No. 310. I hope the Government will accept it. It was unanimously supported by the Sikh Members.

Shri Pataskar: I was going to reply to that. That is also another matter which is the subject matter of great misunderstanding (*An hon. Member*: Controversy). We do not want to raise any unnecessary controversy. The section says:

> "A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto."

How is the marriage to be solemnized by the customary rites? We recognise whatever customs are there because it is not the object of this Bill to make it difficult for people to get married. They have got certain customs to be observed in marriages and other ceremonies. The amend-

ment of my hon. friend says that where both or one of the party to the marriage belongs to the Sikh religion, marriage may be solemnized by *Anand Karaj* (Sikh customary marriage ceremony). That is exactly covered here. It covers not only the Sikh customary marriages but all the other customary marriages because it is not only the Sikhs who live in this land but there are other people also and we want to extend this to everybody and we want that customary marriages shall be recognised. There is no difficulty for my hon. friend. If we once go on making these distinctions with this custom in this part of the country among these people and that custom in that part of the country, we do not know what customs are in vogue where. Therefore we have made a provision here which, I can assure the hon. Member, will cover all forms of customary marriages, including the marriage custom which may be prevalent among the Sikhs and this will apply not only to marriages where both the parties are Sikhs. I do understand the difficulty and anxiety of my hon. friend. Even when one of the parties is a Sikh and the other a non-Sikh, he can be married according to the *Anand Karaj* or anything of that kind. There is absolutely nothing against that.

Sardar A. S. Saigal (Bilaspur): Is there any harm in accepting that amendment?

Shri Patashkar: There is some harm. If Sikhs want to include their custom and if somebody else wants to include his custom, then there are hundreds of types and so many other castes and customs vary. Why is it that I should favour one custom and not the other? I assure that it is covered. Why should they want one particular system alone to be recognised? That is a very wrong attitude, my good friend, to take in the year 1955.

There is another difficulty. Somehow or other the provision about registration has not been properly considered. Does it say that all marriages should be registered? It says that for the purpose of facilitating proof the marriages may be registered. It does not say that the marriages should be registered and the word itself has probably upset some of those friends. It says:

> "For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner....."

The registration of marriages has been prevalent in the Bombay Presidency for over 100 years and has anybody experienced any difficulty on that ground. Supposing some State wants that there should be registration of every marriage in that State, where is the question of going 15 or 20 miles. You have got the register for a number of things; there is the Register for births and deaths. If some State decides—we do not make it compulsory that every State should decide—there is enough machinery for it. In my State, I can tell him that there is a law like this at the present moment and there is absolutely no complaint except one that those who want to marry their sons and daughters against the Sharda Act, they experience some difficulty because it has become impossible for them in the Bombay State to do it. They have to inform the authorities of the age of the parties. Beyond that, for normal people who want to abide by the law, there is absolutely no difficulty.

Then, my friend said, what about this fine of Rs. 25. There are poor people who marry. It is not for marrying or not marrying that the fine is there. If any particular State happens to think that there should be registration and there is contravention this fine is there. It is very contingent; this apprehension is due to some misunderstanding.

[Shri Pataskar]

Then there are certain other points; about dowry there was a good deal of discussion. I can only say that I sympathise with those Members who say that this system of dowry will do not good. It is true that it is a social evil and my sister Shrimati Renu Chakravartty pointed out the Snehalata case. I remember I was a student when that Snehalata burnt herself and we in our college took a vow, ultimately, how they kept that vow, I do not know. But the trouble is it is very difficult to enforce this. I am sure, when we come to the other Bill, namely, the Succession Bill if we are all sympathetic to the cause of women and try to see that this should be remedied and removed, I think, that can be done at that stage. How and why and what, I will not try to dilate upon and from now on create either expectations or antipathies. This is a Marriage Bill and, I think, we should not do it for the time being.

Then, my friend Pandit Thakur Das Bhargava suggested.

श्री भक्त दर्शन : मैं डाउरी के बारे में आपकी इजाजत से विधि मंत्री महोदय से एक प्रश्न पूछना चाहता हूं।

Shri Pataskar: I will finish it.

Mr. Deputy-Speaker: Let the hon. Minister finish and then any question may be asked.

Shri Pataskar: Pandit Thakur Das Bhargava said about prohibited degrees. It is said—

> "the parties are not within the degrees of prohibited relationship, unless the custom them permits of a marriage them permits of a marriage between the two."

I know that amongst the people in the North the prohibited degrees vary from the prohibited degrees in the South. There are customs in the South, even amongst the highest cases, the Brahmins, I know, which permit marriages between certain persons which are not allowed in the North. It is not desirable to enter into the controversy whether one is right or wrong. It has been a subject matter of controversy in the past and it will continue to be for some time in future also. At the present moment, we have thought it better to have the general rule that the parties are not within the degrees of prohibited relationship unless the custom of each of them permits such marriage. So, it will be for the party who wants to marry within the degrees of prohibited relationship to prove that custom. At any rate, it shows how the wind blows and what is the trend of public opinion. So, I would appeal to my hon. friend, my senior colleague so far as parliamentary experience is concerned, to think of the times in which there are already enough problems and we should not add to it one of North and South. Therefore, in a measure which we want to make applicable to all—whatever our ideas may be— it may be that what the hon. Member feels is more correct than what is being followed by other people—it is much better to go along with the rest. From that point of view only this provision has been made there.

Let us not go into the past history of what Dr. Ambedkar did or what somebody else did. As I said yesterday, I come on the scene now and I think, looking to all things as they exist now and the spirit underlying the Bill, let us accept the Bill as it is for the time being. I think it is safe when we say that the parties should be within the prohibited degrees of relationship unless a custom to the contrary is proved. No one group of people living in the North or East can dictate that one custom is bad. I think this should be rather better than exactitude in any way whatsoever.

If I were to refer to all other points a lot of time will be taken. I believe I have dealt with most of the important matters which were the subject

matter of discussion so far as these clauses were concerned. I would like to reply to my hon. friend who wanted to ask something.

श्री भक्त दर्शन : मैं यह पूछना चाहता था कि अभी विधि मंत्री महोदय ने जो यह आश्वासन दिया हैं कि वह जल्दी से जल्दी एक ऐसा विधेयक लाने वाले हैं जिसके द्वारा दहेज की प्रथा समाप्त कर दी जायगी या उस पर कोई प्रतिबंध लगाया जायगा.....

श्री पाटस्कर : ऐसा तो मैं ने नहीं कहा। मैं ने तो सिर्फ यही कहा था कि दहेज की समस्या काफी कठिन हैं और वह एक सामाजिक कुरीति हैं, लेकिन मैं ने यह नहीं कहा था कि मैं उसके लिये कोई कायदा या कानून ला रहा हूं। मैंने तो इतना ही कहा था कि जब यहां पर सक्सेशन बिल आयेगा, उस वक्त इस सवाल की चर्चा करूंगा और उस मौके पर यह जरा ज्यादा ठीक होगा। इस वक्त तो हम मैरिज बिल पर विचार कर रहे हैं, इसलिये इसमें डाउरी का सवाल लाना कुछ ठीक नहीं जचता।

Shri Dabhi: May I ask one question only? In the Lok Sabha Parliamentary Bulletin, Part II, dated August 16, 1954, under the heading 'New Bills under Preparation' from Government, and this is No. 5, he will find a 'Dowry Bill', a Bill to provide for dowry as a punishable offence—introduction. consideration and passing. It is said here that the Government have it under consideration. Therefore, I want to know from the Government why they have dropped this idea when it is stated in the bulletin that a new Bill is under preparation.

3 P.M.

Shrimati Renu Chakravartty: There was also an assurance given in the House.

Shri Pataskar: I had also got a letter from the hon. Lady Member. This Hindu Code Bill, as it was conceived and certain allied measures, we are putting in pieces, because it was found very difficult to get through the whole thing in one law. Probably, at

one stage, such a Bill was in contemplation. But, I would ask the hon. Lady Members to consider whether, when we are thinking of the more serious problems of inheritance for daughters or daughters-in-law and the whole question of women's property, it is or it is not desirable, when the whole thing will come in the near future, may be some time this year, that we try to keep in suspense certain matters till we see what shape matters take. I will plainly say this. Those who want to oppose this inheritance to daughter contend that we give so much dowry to the daughter in marriage. I know this does not go to her. Leave aside my opinion. I think it is much better to the hon. sisters that we do not discuss this matter at this stage as my learned sister Shrimati Chakravartty said.

I would appeal to you to keep your soul in patience till certain other important measures come up. Let us see what shape these measures take. There is time to consider.

Shrimati Renu Chakravartty: Are we to take that the assurance given on the floor of the House is being withdrawn?

Shri Pataskar: It is not withdrawn. I did not say so.

Mr. Deputy-Speaker: Hon. Members will hold their souls in patience as advised by the Law Minister.

Shrimati Renu Chakravartty: We are doing it.

श्री भक्त दर्शन : उपाध्यक्ष महोदय, मेरे प्रश्न को विधि मंत्री पूरी तरह समझ नहीं सके। मेरा निवेदन यह था कि आप जो सक्सेशन बिल लाने वाले हैं उस में दहेज की प्रथा तो जरूर शामिल हो सकती हैं, लेकिन जो कन्या-विक्रय की प्रथा हैं कुमाऊं, गढ़वाल और दूसरे भागों में उस को आप कैसे कवर करेंगे ?

श्री पाटस्कर : वह भी हो सकता हैं, वक्त आयेगा तब देखा जायेगा।

उपाध्यक्ष महोदय : सब हो सकता हैं।

[Mr. Deputy-Speaker]

I shall now put the amendments clause by clause to the vote of the House. First of all there are a number of amendments to clause 3, and there are none by Government. I am now putting all the amendments to clause 3 to the vote of the House.

The question is:

In page 2, lines 23 and 24, *for* "for a long time" *substitute* "from time immemorial"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, lines 23 and 24, *for* "for a long time" *substitute* "for fifty years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 26 *omit* "unreasonable or"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, lines 32 to 35, *omit* "and includes any other civil court which may be specified by the State Government, by notification in the official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;"

The motion was negatived.

Mr Deputy-Speaker: The question is:

In page 3, line 6, *for* "third generation" *substitute* "fifth generation"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3,—

(i) line 6, *for* "third" *substitute* "fifth"; and

(ii) line 7, *for* "fifth" *substitute* "seventh"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3,—

(i) in line 6, *for* "in the line" *substitute* "in the male line"

(i) in line 7, *for* "in the line" *substitute* "in the male line"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, line 7, *for* "fifth" *substitute* "seventh"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, *for* lines 18 to 26 *substitute*:

"(i) if one is a lineal ascendant of the other;"

"(ii) if one is a sapinda of the other"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, line 21, *omit* "of the brother or"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, line 25, *after* "children" insert "or grandchildren"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, *after* line 26, *add*:

"(v) if the two belong to the same *Gotra* or *Pravara*"

"(vi) if the two are sapindas of each other"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, line 32, *after* "relationship by" *insert* "dattaka"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, *after* line 26, *add*:

"(v) if the two belong to the same *gotra* and *pravara*"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Deputy-Speaker: I now come to clause 4. The question is:

In page 3, *for* lines 35 and 36, *substitute*:

"Making of the declaration as provided for in Clause 2"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3,—

(i) in line 35, *for* "Over-riding effect of Act" *substitute* "Applicablity of law now in force"

(ii) *for* lines 37 to 40, *substitute*:

"(a) all texts, rules or interpretations of Hindu law or all customs and usages as part of that law in force immediately before the commencement of this Act shall continue to have effect with respect to matters for which no provision has been made in this Act".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 3, lines 35 and 36, *for* "save as otherwise expressly provided in this Act" *substitute*:

"Notwithstanding anything contained in any other law or any provision to the contrary"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Mr. Deputy-Speaker: Now Clause 5. There are a number of amendments. I am now putting all the amendments to the vote of the House.

The question is:

In page 4, line 6, *add* at the end:

"save in cases where a competent Court has permitted the husband to marry even when the first wife is living as specified in Section 18A"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 6, *add* at the end:

"or, heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 6, *add*:

"Provided that, if the female spouse has expressed in a declaration before a magistrate of the first class that she has consented to her husband having a second wife, this condition shall not apply"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 6, *add*:

"Provided that the husband who has his wife living can marry a second time with the consent of the first wife if the court thinks it necessary to allow a second wife"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 7, *omit* "an idiot or"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 7, *after* "lunatic" *insert* "important"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *for* lines 9 and 10, *substitute*:

"(iii) the bridgroom and the bride have completed the age of twenty-one years on the date of marriage;"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen"

substitute "twenty-one"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *for* "eighteen years" *substitute* "nineteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 9, *after* "eighteen years" *insert* "but has not completed the age of forty-five years"

The motion was negatived.

Mr. Deputy-Speaker: question is:

In page 4, line 9, *for* "eighteen years" *substitute* "nineteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 10 *for* "fifteen years" *substitute* "sixteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 10, *for* "fifteen years" *substitute* "sixteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 10, *for* "fifteen years" *substitute* "sixteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 10, *for* "fifteen years" *substitute* "thirteen years"

Mr. Deputy-Speaker: The question is:

In page 4, line 10, *after* "fifteen years" *insert* "but has not completed the age of forty years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 10 *add*:

"Provided that if the bridegroom is above 40 years of age, the age of the bride shall be above 25 years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 12 and 13, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 12 and 13, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 12 and 13, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 12, *omit* "each of"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 14 to 16, *omit* "unless the custom or usage governing each of them permits of a mariage between the two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 14 to 16, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

The motion was negaitved.

Mr. Deputy-Speaker: The question is:

In page 4, lines 14 to 16, *omit* "unless the custom or usage governing each of them permits of a marriage between the two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 15, *omit* "each of"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *omit* lines 17 to 19.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 17 and 18,

for "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 17 and 18, *for* "eighteen years" *substitute* "twenty-one years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, lines 17 and 18, *for* "eighteen years" *substitute* "fifteen years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 18, *for* "has", *substitute* "as well as the consent of the bride, have"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"Provided that this section will not be applicable to widow re-marriage or where widow re-marriage is allowed in the family between any widow of the family and another male member of the family by custom and usage."

Provided further that the provisions of this section will not be applicable to the marriage where a previous wife is living and is incapable to give birth to a child, or is invalid, or infirm or unable to perform any household duty on account of health or calamities which might have occurred to her after her marriage."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"(vii) the parties to the marriage shall not accept or give any dowry or bride-price on the occasion of or as a condition of or as a consideration for such marriage.

(viii) where the bridegroom is a widower or a divorced husband, he shall not marry a virgin, and *vice versa*.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"(vii) neither party being a widow or a widower shall marry another who is not a widower or a widow"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"(vii) the parties do not belong to the same *Gotra* and *Pravara*".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"(vii) that the bride or the bride's guardian or relations shall not present or give any dowry in any shape or form as a consideration of the betrothal or marriage."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 19 *add*:

"(vii) where the disparity between the age of bride and bridegroom is not more than fifteen years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 5 stand part of the Bill."

The motion was adopted

Clause 5 was *added to the Bill.*

Mr. Deputy-Speaker: New I come to Clause 6. I am putting the amendments to the vote of the House.

The question is:

In page 4,—

(i) in line 28, *after* "brother" *insert* "or brothers"; and

(ii) in lines 28 and 29, *omit* "as

between brothers the elder being preferred"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In pages 4 and 5, *omit* lines 30 to 41 and 1 to 4 respectively.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In pages 4 and 5, *for* lines 30 to 41 and lines 1 to 4, respectively, *substitute*:

"(f) the paternal uncle by full blood; as between paternal uncles the elder being preferred;

(g) the maternal grandfather.

(h) the maternal grandmother;

(i) the maternal uncle by full blood; as between maternal uncles the elder being preferred;

Povided that the bride is living with him and is being brought up by him;

(j) the brother by half blood; as between brothers by half blood the elder being preferred:

Provided that the bride is living with him and is being brought up by him:

(k) the paternal uncle by half blood; as between paternal uncles by half blood the elder being preferred:

Provided that the bride is living with him and is being brought up by him."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4,—

(i) in line 30, *after* "brother" *insert* "or brothers";

(ii) in lines 30 and 31, *omit* "as between brothers by half blood the elder being preferred";

(iii) in line 32, *after* "him" *insert* "or them"; and

(iv) in line 33, add at the end "or them"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4,—

(i) in line 34, *after* "uncle" *insert* "or uncles"; and

(ii) in lines 34 and 35, *omit* "as between paternal uncles the elder being preferred"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4,—

(i) in line 36, *after* "uncle" *insert* "or uncles";

(ii) in lines 36 and 37, *omit* "as between paternal uncles by half blood the elder being preferred";

(ii) in line 38 *after* him" *insert* "or them"; and

(iv) in line 39, *add* at the end "or them"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5,—

(i) in line 1, *after* "uncle" *insert* "or uncles";

(ii) in lines 1 and 2, *omit* "as between maternal uncles the elder being preferred";

(iii) in line 3, *after* "him" *insert* "or them"; and

(iv) in line 4, *add* at the end, "or them"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *omit* lines 3 and 4.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 7, *for* "twenty-first year" *substitute* "thirtieth year"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 12,—

(i) *for* "any such person", *substitute* "persons;" and

(ii) *for* "is", *substitute* "are".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *omit* lines 15 to 18.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 15 to 18, *substitute*:

"(5) Notwithstanding anything contained in this Act, the district court may, if it is necessary so to do in the interest of the bride, prohibit by injunction any intended marriage or make an order permitting any marriage, notwithstanding that the guardian has withheld his consent to such marriage."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 16, *after* "marriage" *insert*:

"or by making an order permit any marriage notwithstanding that the guardian has withheld his consent to such a marriage

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 18, add:

"(6) Consent shall be in writing specifying the exact relationship of the guardian with the bride and indicating his personal satisfaction as to the suitability of the marriage with the bridegroom giving such other particulars as may be prescribed."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 29, add:

"Provided that the bride is living with him and is being brought up by him."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, *after* line 35, *add*:

"Provided that the bride is living with him and is being brought up by him."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 6 stand part of the Bill".

The motion was adopted.

Clause 6 was added to the Bill.

Mr. Deputy-Speaker: Clause 7. The amendments are 307, 308, 309, 310 and 5.

The question is:

In page 5, *for* lines 19 to 21 *substitute*:

"*Ceremonies for a Hindu marriage.*

—(1) A Hindu marriage shall be solemnized in accordance with the sacramental rites and customary ceremonies"

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 308, Shri K. L. More. Even where *saptapadi* is obligatory, this need not take place. Then, when will the marriage be complete?

The question is:

In page 5, *omit* lines 22 to 25.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *for* lines 22 to 25, *substitute*:

"(2) Such rites and ceremonies shall include the *Saptapadi* (that is, the taking of seven steps by the bridgegroom and the bride jointly before the sacred fire) and the marriage shall become complete and binding when the seventh step is taken."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 25, *add*:

"(3) Where both or one of the party to the marriage belongs to the Sikh religion, marriage may be solemnized by Anand Karaj (Sikh Customary marriage ceremony)."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *after* line 25, *add*:

"(3) Notwithstanding anything contained in this Act, no marriage after one year from the date of solemnization, shall be deemed to be invalid merely by reason of any irregularity in the performance or non-performance of any ceremonies of marriage.

(4) A marriage shall be presumed to be solemnized, according to law, if both the parties to the marriage are major and admit the solemnization before the court."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted

Clause 7 was added to the Bill.

Mr. Deputy-Speaker: New clauses 7A and 7B.

The question is:

In page 5, *after* line 25, *insert*:

"7A. *Marital duties.*—(1) The wife is bound to live with her husband and to submit herself to his authority.

(2) The husband is bound to live with his wife and to maintain her."

The motion was negatived.

Mr. Deputy-Speaker: I do not think those who voted against this are not in favour of these injunctions.

Sardar Hukam Singh: We must create some enforcement department.

Mr. Deputy-Speaker: Now R will put amendment No. 229 to the vote of the House. The question is:

In page 5, *after* line 25, *insert*:

"7A. *Results of marriage and mutual rights and obligations of the husband and the wife.*—

(a) The parties to the marriage shall live together as companions and be entitled to each other's society.

(b) The wife shall be entitled to be maintained by the husband.

(c) Both the husband and the wife shall be entitled to full conjugal fidelity to each other's mutual respect and affection and service of each other shall inform their relations.

(d) Both the parties shall jointly or severally be responsible for the right upbringing of the children from the marriage.

7B. *Rights of property.*—(1) In the absence of any contract to the contrary the parties to the marriage shall acquire joint interest in each other's property as a result of marraige and all subsequent acquisition shall in the

[Mr. Deputy-Speaker]

absence of clear intention to the contrary be presumed to be joint.

(2) The rights to properties jointly acquired at the time of marriage or subsequently shall be governed by the terms and conditions of any agreement entered into by the parties and in the absence of any specific contract both shall jointly manage, use and profit by the property.

(3) The husband and the wife shall be entitled to acquire, hold and dispose of their properties separately and have separate business.

(4) The wife shall succeed to all the properties in the husband's family along with the husband and after his death, if the marriage had not been dissolved during the life time of the husband, the wife shall inherit the properties in her husband's family which her husband would have inherited if alive.

(5) The husband will also likewise succeed jointly with the wife in case the wife is entitled to succeed to any property from her father's family during the period of subsisting marriage.

(6) In case of remarriage of the husband or the wife all the properties which the husband or the wife got from each other or the families of each other's spouse shall be forfeited to the husband or the wife and their respective father's family as the case may be.

(7) Any cause which furnishes a ground for judicial separation or divorce will be deemed to be ground provided for partition of the joint properties.

(8) The rights of inheritance to each other's property will be governed by the provisions of the Hindu Succession Act"

The motion was negatived.

Mr. Deputy-Speaker: Now I come to clause 8.

The question is:

In page 5, line 27, *for* "may" *substitute* "shall".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 28, *for* "may" *substitute* "shall"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, *omit* lines 32 to 41.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5 *omit* lines 32 to 39.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5 *omit* lines 32 to 39.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 33, *for* "may" *substitute* "shall"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, lines 33 and 34, *omit* "if it is of opinion that it is necessary or expedient so to do,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, lines 35 to 37, *omit* "or in any part thereof, whether in all cases or in such cases as may be specified,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 37, *omit* "where any such direction has been issued"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 5, line 39, *for* "twenty-five rupees" *substitute* "one hundred rupees"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 to 12

Mr. Deputy-Speaker: The House will now take up clauses 9 to 12 (both inclusive).

Shri Venkataraman: Amendment No. 313 for clause 8A may also be taken up along with them. The idea was that all new clauses should be considered along with the last clause.

Shrimati Renu Chakravartty: . I thought that new clause 8A would be considered along with clause 8.

Shri N. C. Chatterjee: I am not moving amendment No. 313.

Mr. Deputy-Speaker: All right. So there is no need to take it. The time allotted for clauses 9 to 12 is three hours. Now it is practically 3.25. The House will adjourn at 6 p.m. So about 25 minutes will be left for the hon. Minister to reply tomorrow.

So far as amendments are concerned, they may kindly be passed on to the table.

Shri Rane: We have already passed them on.

Mr. Deputy-Speaker: May I make a request to hon. Members? I would like to call upon at least one spokesman from each group. I have not missed that so far as I am able to remember. But Shri V. G. Deshpande was anxious to speak on clause 4, Shri N. C. Chatterjee spoke at length. I would ask hon. Members to speak on those amendments of which they are in favour or of which their group is in favour, so that if there is sufficient time I will call another Member who has specially tabled those amendments. If per chance, that is not possible, they must be satisfied with what their spokesman has said on those points. In the case of Shri V. G. Deshpande who had moved his amendment to clause 4, I was not able to give him time because the time allotted was to short.

Shrimati Renu Chakravartty: How many spokesmen are there for the Congress Party?

Shri Bogawat: Don't create that impression.

Some of us have not been able to speak up till now. Why do you say 'Congress Party'?

Pandit Thakur Das Bhargava: This is a piece of social legislation and there is no whip so far as the Congress Party is concerned. We are all free, and I think similarly Members of other parties must be free. So there is no question of party involved. You can call upon any person whom you prefer. At the same time, those who have moved amendments may be given some time. This is not a party question at all.

Mr. Deputy-Speaker: I am not saying that. It is physically impossible to call upon all the Members who want to speak or who have moved amendments. But in the case of Shri V. G. Deshpande, who had moved certain amendments to clause 4, I was not able to give him a chance. To avoid such a contingency, I am saying this; it is not as a prohibition. But from each group at least one spokesman will be called, and if time permits, the Member who has specially moved amendments will be called. But if per chance, there is no time, let not the representation on behalf of any group be defective to that extent.

[Mr. Deputy-Speaker]

I am calling two hon. Members from the Congress Party as against one from the Opposition normally—except in exceptional circumstances.

Shrimati Renu Chakravartty: May we know which are the amendments moved for this group of clauses?

Mr. Deputy-Speaker: Amendments are still being received.

Now, whoever rises to speak will kindly give the number of the amendment he is moving, of which the House should take notice.

Shri N. C. Chatterjee: This group will cover clauses 9 to 12, I think the Business Advisory Committee allotted three hours for this.

Mr. Deputy-Speaker: Yes. Discussion on this will go on till 6 p.m. and tomorrow the Minister will be called upon to reply.

Shri N. C. Chatterjee: We are now coming to the more controversial clauses—restitution of conjugal rights, judicial separation, void marriages and voidable marriages. With regard to judicial separation, clause 10 has six sub-clauses, (a), (b), (c), (d), (e) and (f). The first ground is desertion for two years, second, cruelty, third, leprosy, fourth, venereal disease in a communicable form, fifth, insanity and the last ground is 'has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse', that is, infidelity.

[Sardar Hukam Singh *in the Chair.*]

By amendment No. 321, I am suggesting an additional clause (5) to be inserted in sub-clause (1) of clause 10, which deals with judicial separation. And I would request my hon. friend Shri Pataskar to consider this sympathetically. We hope there will be no serious objection to accepting that amendment. The new clause (g) which I am seeking to add reads thus:

"has changed his or her religion and has embraced any other religion mentioned in section 2 clause (1) sub-clause (c)".

You will be pleased to notice that in clause 13 (1) there is one sub-clause put in whereby conversion to another religion has been made a ground for divorce. This is what you will find under clause 13:

> "Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

....(ii) has ceased to be a Hindu by conversion to another religion;".

It will be the same thing with regard to Buddhists, Jains and Sikhs as well. If either of them ceases to be a Hindu according to the comprehensive definition given under clause 2, then that will be a ground for divorce. I think there is a good deal of sense in that, and I hope there will be no opposition to this. So far as I know, no amendment has been given to that. Anyhow, what I am suggesting is that the same thing should be done in the case of judicial separation also, and a similar provision should be put in that if a Hindu embraces Christianity or Islam, then that should be made a ground for judicial separation. If you make it a ground for divorce, then there is a good deal of force in this suggestion that it should also be made a ground for judicial separation.

Shri M. S. Gurupadaswamy: May I ask Shri N. C. Chatterjee one thing? If there is a change of religion, then that will be a ground for divorce. And that is the purpose of the Bill also. Does my hon. friend want that that ground should be quoted for judicial separation also?

Shri U. M. Trivedi: Yes.

Shri M. S. Gurupadaswamy: If there is a change of religion, then it will automatically lead to divorce.

Shri U. M. Trivedi: How?

Mr. Chairman: Not automatically. A decree shall have to be obtained. Automatically it does not sever the union.

Shri N. C. Chatterjee: I am glad that my hon. friend Shri M. S. Gurupadaswamy has raised the point. If you look at clause 13 you will find that there is nothing automatic.

Clause 13. only says:

> "Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce....".

Some hon. Members have even tabled amendments to the effect that that can also be done by persons interested. But anyhow, certainly, the husband or the wife can apply for dissolution. Then, the grounds for divorce have also been set out in that clause. So, there is nothing automatic in that clause. Therefore, it is not compulsory that there shall be a divorce. I am suggesting a case where a gentleman or a lady, if the other spouse has changed her or his religion, may not like to go to a court and go to the extreme length of applying for divorce, but may like to have judicial separation.

If you will look at clause 10, you will see that it reads:

> "Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground...."

Then the grounds for judicial separation are set out. I want to add one more ground for judicial separation, namely, change of religion. If that is done, there will be no overlapping and there will be nothing improper.

I ought to draw the attention of this House to a very thoughtful sentence in the Minute of Dissent of Shri Indra Vidyavachaspati. On page (x) of his Minute of Dissent, he says as follows. I read some portions from it the other day during the consideration stage. You know Indra Vidyavachaspati is the son of Swami Sraddanandaji, and he is a great Arya Samajist leader. This is what he says in his Minute of Dissent:

> "Finally, this Bill is not uniformly applicable to all Indians. There would remain a very effective means of circumventing it. Those who want to marry more than one wife will change their religion. This will further aggravate the evil of conversion which would arouse public discontent."

He has pointed out that we are not making one codified and uniform law for all sections of Hindus, nor for all citizens living in the Indian Republic; therefore, apart from the fact that it is a communal piece of legislation, it will further aggravate the evil of conversion.

I am saying that clause 10 and clause 13 should be put on a par. Supposing the husband wants to change his religion and he wants to be a Christian, he ought to know that there may be an obligation for judicial separation, although there may not be a divorce; he may marry again after the divorce is granted, but there must be provision for judicial separation which will mean that the marriage ties will not be dissolved, but he will have to submit to certain obligations. That, I think, would be a reasonable course to adopt.

[Shri N. C. Chatterjee]

I have got one amendment in regard to clause 11 also. Clause 11 deals with void marriages, and reads:

> "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes anyone of the conditions specified in clauses (i), (iv) and (v) of section 5."

I would invite the attention of the hon. Minister to what clause 5 says. Clause 5 deals with the conditions for a Hindu marriage, and reads:

> "A marriage may be solemnized between any two Hindus, if the following conditions are fulfiled, namely....."

Then the essential conditions for a Hindu marriage are prescribed. Supposing the statutory conditions that you are prescribing here are not fulfilled, then the marriage should be void. You have provided for six conditions to be satisfied before a Hindu marriage can be solemnized. But if you look at clause 11, you will see that only three grounds are being made mandatory, namely those specified in clauses (i), (iv) and (v) of clause 5.

Clause 5 (i) reads:

> "neither party has a spouse living at the time of the marriage".

That is one of the grounds on which a marriage can be void. Clause 5 (iv) reads:

> "the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two."

That is to say, if the parties to a marriage are within prohibited degrees of relationship, the marriage can be declared void. Sub-clause (v) of clauses 5 reads:

> "the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two".

Under this clause, if the parties are *sapindas* of each other, then also the marriage can be declared void. But I do not understand why you omit the condition specified in sub-clause (ii) of clause 5, which reads:

> "neither party is an idiot or a lunatic at the time of the marriage".

Am I to understand then that even if at the time of the marriage a man was a lunatic or an idiot, you will still not make the marriage void? I do not think what you are doing here is proper. When you penalise a man having regard to the custom, if he has more than one wife living, or if he is within the prohibited degrees of relationship, or if he is a *sapinda* of the other, then I think it is only logical and consistent to make idiocy or lunacy of either party also a ground for making the marriage void.

In sub-clause (vi) of clause 5, you say:

> "Where the bride has not completed the age of eighteen, the consent of her guardian in marriage, if any, has been obtained for the marriage".

If you retain that provision, then the consent should be made essential; if there is no such consent, then the marriage should be allowed to be made void. Do not prescribe conditions, and then keep loopholes. I must submit that especially the ground of idiocy or lunacy should be strongly enforced, and there may not even be so much insistence on *sapinda* relationship or prohibited degrees of relationship and so on.

Mr. Chairman: Perhaps it is intended that it will only be voidable. If the parties live on happily after the

marriage, they might not go in for separation.

Shri N. C. Chatterjee: If that is so, then we should be logical in regard to the other things also. Even among *sapindas* or prohibited degrees, there may be cases where marriages are perfectly happy. Do not then make them a condition. If you make them a condition then they should be basic things requisite for a valid marriage.

I have therefore tabled an amendment in this regard. It is amendment No. 323 which stands in the joint names of myself, Shri B. D. Shastri, Babu Ramnarayan Singh, and Shri V. G. Deshpande; and it reads:

> "In page 7, lines 8 and 9, *omit* clauses (i), (iv) and (v) of".

If this amendment is accepted, then clause 11 will read thus:

> "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a degree of nullity if it contravenes anyone of the conditions specified in section 5".

I think, Sir, that it would fit in with the whole scheme. It would mean, a marriage can be solemnized between A and B provided the following conditions are fulfilled etc., and the conditions will be as laid down in clause 5. I submit that this amendment should be accepted.

With respect to the clause on 'Restitution of conjugal rights', some amendments have been suggested and if necessary they can be discussed.

Shri Dabhi: Sir, I want to drop the words "on a petition presented by either party thereto" in clause 11. Clause 11 at present reads as follows:

> "Any marriage solemnized after the commencement of this Act shall be null and void and may on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

You will see that clause 11 refers to void marriages whereas clause 12 refers to voidable marriages. We know the important distinction between a void contract and a voidable contract. A void contract is from the beginning *ab initio* void, while a voidable contract is something different. When a particular contract is void, it can be declared so on a petition presented by any person whatsoever. Because that particular contract is actually void, any person can present a petition and the court can declare it null and void. I do not understand why there is any necessity at all to insert the words 'on a petition presented by either party thereto'.

It was argued before the Select Committee why any stranger should be allowed to present a petition to declare a marriage void. My reply to this argument is that, in the first place, a void marriage is against public policy. Now, by virtue of this Bill, polygamy also is considered to be against public policy. All these marriages have been now declared against public policy. Therefore, when a particular marriage is declared to be against public policy, it must be left open to any party to go and request the court that that particular marriage should be declared null and void. In the case of special marriages, only the party to the marriage is concerned and not other persons. But here it is not so. Even those who are not a party to the marriage are concerned with a void marriage. Suppose in a joint Hindu family, a man marries a woman who is related to him within

[Shri Dabhi]

the prohibited degree of relationship family will be concerned because the child born of such wedlock would be illegitimate and therefore everyone would be affected.

There is also another reason why the words I have referred to should be dropped. You will see that section 24(1) of the Special Marriage Act, 1954, which has already been passed, is similar to this clause. There it is stated:

> 'Any marriage solemnized under this Act shall be null and void and may be so declared by a decree of nullity if, etc....."

Even in the Special Marriage Act, there was no necessity to insert the words "on a petition presented by either party thereto". So, I do not see any reason why these words should be kept here. On the contrary, even if these words are there in the Special Marriage Act, they should not be retained here.

There is another point also. Suppose there is a particular agreement which is null and void; any person can go to a civil court and ask the court to declare it null and void. But this is a specific Act and side by side it is said that only a party to a marriage can go to a court. Therefore, action in the civil court may be barred. Under all these circumstances, and specially when there is no such wording in the Special Marriage Act, these words should not be there in this Act also. These are two similar Acts and so it would create a doubt in the minds of the courts also why these words are kept in one Act and not in the other.

I think my amendment is very reasonable and the Government should see their way to accept it.

पंडित ठाकुर दास भार्गव : जनाब चेअरमैन साहब, मैं ने दो एमेन्डमेन्ट्स के नोटिस दिये हैं। एक तो है २३६ नं० का जो कि दफा ११ के मुताल्लिक हैं और दूसरा है २४१ नं० का जो दफा १२ के मुताल्लिक हैं। मैं इन दोनों के बारे में कुछ अर्ज करना चाहता हूं।

जनाब मुलाहजा फरमायेंगे कि जहां तक सवाल दफा ५ का हैं, उस में पांच चीजें दी हुई हैं जो कि जरूरी हैं, पेशतर इस के कि किसी शख्स की शादी हिन्दुओं में जायज हो।

१. स्पाउस दूसरा नहीं होना चाहिये।

२. शादी के वक्त दोनों में से कोई पार्टी लुनैटिक या इडियट नहीं होना चाहिये।

३. ब्राइडग्रूम की उम्र १८ साल से कम नहीं होनी चाहिये और ब्राइड की उम्र १५ साल से कम नहीं होनी चाहिये शादी के वक्त।

दूसरी जो चीजें हैं जिन का दफा ४ और ५ में जिक्र हैं, और जिन का जिक्र आ चुका हैं वह यह हैं कि आपस में लड़की और लड़के को सपिन्ड नहीं होना चाहिये और प्राहिबिटेड डिगरीज में नहीं आना चाहिये।

६ ठी शर्त यह हैं कि अगर कोई लड़की १५ साल से ज्यादा हैं और १८ साल से कम हैं तो उस सूरत में उस को अपने गार्जियन की कंसेन्ट जरूरी होगी। मेरी निहायत अदब से गुजारिश यह हैं कि जहां तक गार्जियन की कंसेन्ट का सवाल हैं, इस की सिर्फ उन सूरतों में जरूरत पड़ेगी जब तजुर्बा यह बताये कि शादी के बाद उन की कंसेन्ट न लिये जाने से कोई खराबी पैदा हो जायेगी। लेकिन ऐसा हो सकता हैं कि गार्जियन की कंसेन्ट न भी हो तो भी जिस जगह लड़के और लड़की की शादी होने पर दोनों के खुश रहने की इमकान हो और लड़के और लड़की दोनों चाहते हों, तो ऐसी सूरत में यह जो शर्त हैं उस की कोई जरूरत नहीं हैं। इसलिये जो एमेन्डमेन्ट मैं ने दफा १२ में दिया हैं वह सिर्फ इसी मकसद से कि जहां तक वायडबुल मैरेज का ताल्लुक हैं उस में लिखा हैं कि जिस शादी में पहले गार्जियन की रजामन्दी न ली गई हो

उस को भी वायडेबुल करार दिया जा सकता है। या रजामन्दी गार्जियन की फ्राड और फोर्स से ली गई हो। दफा १२ में यह प्राविजन है कि अगर कंसेन्ट फ्राड या फोर्स से ली गई हो तो वह शादी वायडेबुल हो जाय। लेकिन इस का कोई ठीक इलाज नहीं रक्खा गया कि अगर कंसेन्ट ली ही न जाय तो क्या हो। फ्राड और फोर्स तो बहुत थोड़े केसेज में होगा, लेकिन ला में जो प्राविजन है कि गार्जियन की कंसेन्ट बहुत जरूरी है, उस का एक इलाज यह होगा कि वह शादी वायडेबुल करार दे दी जाय, लेकिन यह जरूरी नहीं है कि कोर्ट भी वायडेबुल उस को करार दे दे क्योंकि लड़की कह सकती है कि उस के ताल्लुकात अपने आदमी से बहुत अच्छे हैं और शादी को एफेक्ट किया जाय। यह उस की मर्जी पर ही मुनहसिर है। मैं सिर्फ इतना ही चाहता हूं कि ये अलफाज दर्ज कर दिए जायें कि अगर कन्सेन्ट बिल्कुल ही न ली गई हो, तो भी मैरिज को वायडेबुल करार दे दिया जाये। दफा ११ में यह लिखा हुआ है कि अगर शादी के बाद कोई झगड़ा हो जाय, और किसी शर्त को तोड़ा जाय, तो एक पार्टी के पेटीशन देने पर—सिर्फ पार्टीज के, दूसरे के नहीं—वह मैरिज वायडेबुल हो सकता है यानी वह पेटीशन सिर्फ पार्टीज दे सकती हैं, कोई दूसरा नहीं कर सकता है। अगर कोई पर्सन इन्टरेस्टेड है, तो वह कुछ नहीं कर सकता है। ढाबी साहब ने जो वजहात पेश की हैं, उनके अलावा मैं यह अर्ज करना चाहता हूं कि हमारे यहां एक एक गोत्र के कई कई सौ गांव हैं। जिस इलाके से मैं आता हूं, वहां पर कई गांवों का एक ही गोत्र है। अगर वहां पर कोई सपिंडा रिलेशनशिप से शादी कर ले, तो उसका गांव में रहना मुश्किल हो जायगा। सब लोग अंगुश्त-नुमाई करते हैं और समझते हैं कि उस शख्स ने इन्सेस्चुअस इन्टरकोर्स किया है। ऐसा लगभग सारे हिन्दुस्तान में है। यह बात अलग है कि दूसरे इलाकों में यह बात इतनी स्ट्रिक्ट न हो। प्योरिटी आफ फैमिली और प्योरिटी आफ रेस के इन्ट्रेस्ट में यह नियम बना हुआ है और उस पर अमल किया जा रहा है। पांच पुश्तें माता की तरफ से और सात पुश्तें पिता की तरफ से छोड़ दी जाती हैं, यह कस्टम रायज रही है। लेकिन जिनकी शादी इस कस्टम को तोड़ कर की गई है, वह भी दफा ५ के मुताबिक जायज करार दे दी गई हैं। वे लोग इस कस्टम को बड़े जोर शोर से मानते हैं। पंजाब में कुछ लोग ऐसे हैं जो दूसरी कस्टम से गवर्न होते हैं, वे नहीं आयेंगे, लेकिन जो लोग इस नियम को बड़े जोर से मानते हैं, उन के लिए तो यह और भी नुक्सान की चीज है। सिर्फ पार्टीज को इजाजत देना ठीक नहीं है। पहले तो वे कायदे को तोड़ कर शादी करेंगे, उसके बाद क्या वे ही झगड़ा करेंगे और पेटीशन देंगे। इसका मतलब तो यह है कि यह सपिंडाशिप का कानून ही हटा लिया जाय। अगर इसका कान्ट्रावेन्शन कर लिया जायगा, तो कोई रुकावट नहीं रहेगी।

मेरा ख्याल है कि हिन्दुस्तान की आबादी में तीन चौथाई लोग इस सेन्टीमेंट को मानते होंगे—अछूत, जाट, जमींदार सब मानते हैं। अपर इंडिया में खास तौर पर यह सेन्टीमेंट बड़ा जबर्दस्त है। या तो "पार्टी दैयरट्" के अलफाज हटा दिए जायें, या फिर मेरी अमेंडमेंट मन्जूर कर ली जाय कि कान्ट्रावेन्शन की सूरत में पार्टीज के अलावा पर्सन इन्ट्रेस्टेड को भी शादी को वायड करार देने के बारे में पेटीशन देने का अख्तियार होगा। मैं ने उसकी तारीफ भी दे दी है कि परसन्ज इन्ट्रेस्टेड में वे लोग भी शामिल होंगे, जो सपिंडा रिलेशनशिप में आते हैं और जो प्राहिबिटेड डिग्री में आते हैं। कम से कम वे शख्स ऐसे हैं, जिनको इससे सख्त तकलीफ होगी। वे कोर्ट में जा कर कह सकें कि हमारी यह एन्शेन्ट कस्टम है और हमारी प्योरिटी आफ फैमिली और प्योरिटी आफ रेस पर इसका खराब असर पड़ेगा। ढाबी साहब ने बताया है कि अगर ऐसा कोई मैरिज वायड हो जाय तो उसमें से पैदा हुआ बच्चा इल्लेजीटिमेट बन जायगा और उसके हक्क पर असर पड़ेगा।

जब मैं ने राइट्स एंड आबलिगेशन्ज का जिक्र किया, तो मेरे कई दोस्तों ने एतराज किया कि इसकी ला में क्या रेमेडी है। अगर कोई

[पंडित ठाकुर दास भार्गव]

दफा ४ और ५ को तोड़ डालें, तो कोई रेमेडी नहीं हैं । जहां तक शादी का सवाल हैं, आप कहते हैं कि वह वायड नहीं होगी । तो फिर क्या होगा ? हमारे पीनल कोड में एक बड़ा लॅकुना हैं । अगर कोई इन्सॅस्चुअस इंटरकोर्स करें, तो कोई सजा मुकर्रर नहीं हैं । अगर कन्सेन्ट हो, तो भी नहीं और अगर न हो, तो भी नहीं । मैं ने अमेंडमेंट पेश की हैं कि जो ऐसी शादी में शामिल हो और उसमें हिस्सा लें, तो उसको वही सजा दी जाय, जो कि छोटी उम्र की शादी कराने के लिए दी जाती हैं । मैं सिर्फ इतना ही अर्ज करना चाहता हूं कि इसको पर्सन इन्ट्रेस्टेड की तारीफ में बढ़ा दिया जाय । मेरी अमेंडमेंट भी वही हैं, जो कि श्री चॅटरजी साहब की हैं, यानी यह कि जहां तक दफा १, २, ३, ४ और ५ का सवाल हैं, अगर कोई शादी एसेंन्शियल कन्डीशन के खिलाफ हो, तो वह शादी वायड हो जाय । हमने शारदा एक्ट में शादी को वायड करार नहीं दिया, बल्कि सजा रखी । इसकी वजह यह हैं कि उस समय ऐसा करना मुश्किल था । लेकिन अब तो जमाना बदल गया हैं । आप सैक्रामेंटल मैरिज को खत्म कर चुके हैं और आप कहते हैं कि डाइवोर्स हो सकता हैं, शादी खत्म हो सकती हैं । किस तरह की शादियां अब तक होती रही हैं ? मैं अर्ज करना चाहता हूं कि छोटी उम्र की शादी देश के स्टैमिना को खत्म करती हैं । हम ने वह एक्ट १९२९ में पास किया था । उसके २५ वर्ष के बाद अब वक्त आ गया हैं कि ऐसी छोटी उम्र की शादियों को वायड करार दे दिया जाय, जिनमें लड़का १८ बरस से कम हो और लड़की १५ बरस से कम । मैं समझता हूं कि इस तरह ही इसका सद्दुर्-बाब होगा, किसी और तरीके से नहीं होगा ।

Shri Raghavachari (Penukonda): I beg to move:

> In page 6, line 29, *after* "has" *insert* "for a period of not less than one year"

I do not wish to take much time. I only wish to move this amendment to clause 10. Before I say a few words about this amendment, I beg to oppose the retention of clause 9. I for one feel that under the old conditions, when there was that kind of indissolubility of marriage there was need for this kind of initial compulsion and possibly adjustments could come on later and the partners could establish concord between themselves. But all that *zamana* is gone now. This is a new age of freedom and free play for desires and likes and dislikes. Under these circumstances, to my mind, it looks that the retention of this clause is inconsistent with the provisions for the new kind of society which we want to establish.

Now, I come to amendment No. 318. It relates to judicial separation. One might say that many of these clauses unfortunately find a place in the law for judicial separation and that judicial separation ultimately confirms itself into a divorce later; the reason being that the other partner whom we choose for life as a partner falls ill or is unfortunately visited by some kind of a disease. Of course, there is the idea of providing for compensation during the rest of the life of the other party. But even then, I find there is no time limit fixed in sub-clause (b). The sub-clause says.

> "has, immediately before the presentation of the petition, been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner;"

Where is the period fixed there? There is no mention of any year at all. So, on the date of the petition, if unfortunately it is found that the other party is suffering from the disease, the petition can be presented. I therefore want to add "for a period of not less than one year". There must be some period fixed. Otherwise it would lead to great hardship.

Another thing has also to be examined. It is about the language. I wish the Members should just see how the wordings are:

"in a communicable form, the disease not having been contracted from the petitioner;"

Shri S. S. More: Does my friend suggest that the disease should be there for a period of one year before the presentation of the petition?

Shri Raghavachari: Yes.

4 P.M.

Shri S. S. More: It will be very difficult to prove the origin of the disease.

Shri Raghavachari: Now, under the medically advanced age most of these diseases are curable and absolutely curable.

Dr. Rama Rao: All diseas are curable.

Shri Raghavachari: Particularly venereal disease are curable. The doctors claim to have the capacity of curing them. Now, we are providing that if on the day of the presentation of the petition the other party is suffering from a venereal disease, judicial separation will follow. This is something, which, to my mind, looks very harsh. Then againn, as I submited earlier, from the sub-clause "the disease not having been contracted from the petitioner;" the question will arise—when husband and wife are living together—as to who contracted from whom. This is another matter for evidence and we know how evidence comes in in such cases.

Pandit Thakur Das Bhargava: How can it be proved?

Shri Raghavachari: As I was submitting, I feel that a venereal disease or any other disease must necessarily be an occasion for one of the partners to bother about and get the other partner cured so that they happily live together rather than go to a court and get separated once and for all. Therefore, I submit that my amendment may be accepted.

Shri Bogawat: Sir, I have tabled two amendments one under clause 10 and the other under clause 12. I do not know why the hon. Minister for Law did not like to avoid marriages which are in contravention of sub-clause (iii) of clause 5. This sub-clause mentions about the age of the bridegroom and the bride. Now, if the marriage is against the provisions of this sub-clause, I do not understand why such marriages should not be avoided. This was a very important provision which ought to have been mentioned under this clause. I do not know why, by mistake or otherwise, this is not being mentioned. Under the Bombay Marriage and Divorce Act and Monogamy Act, this was mentioned. Not only that, if there was contravention of this provision, then the offence was taken to be cognizable. In order to stop this, it is quite necessary that there should not be child marriages. Otherwise, thousands and thousands of child marriages are taking place, and this will continue if they are not avoided. Therefore, they must be considered as void and there must be severe punishment for performing such child marriages—that is marriages below the age of 15 in the case of a girl and 18 in the case of a bridegroom. I think this clause ought to have been there. That is why I have put in my amendment adding a sub-clause (e) under clause 12 saying that if there is such a marriage and there is breach of sub-clause (iii) of clause 5, then that marriage should be void.

Now, Pandit Thakur Das Bhargava has said that there should be a petition when the marriages are void. I think this is essential. We have taken care about polygamy and have tried to give freedom to our females. We have tried to see that there is monogamy because our Constitution has said that we cannot deny

[Shri Bogawat]

any right to which a person is entitled to under article 14. Now, by this Bill we have given this right to our ladies who are about 16 crores out of 36 crores. But, I am very sorry to say that this right is denied to Muslim ladies. There should be some Bill to see that such marriages are void. There should be right to any person to apply to the court and see that such marriages are void. Now, there is agitation in Pakistan when the Prime Minister of Pakistan has married a second time. Even Muslim ladies are agitating. Therefore, I do not know why our Government is shy to bring in such a legislation of monogamy for the ladies including the Muslim ladies who are about 2 crores. Such a Bill ought to be there and all such marriages, where the law of monogamy is broken, should be considered as void, and this can be done by any person bringing in a suit or application.

Under clause 10 I have given an amendment that sub-clause (f) should be deleted. This sub-clause says:

> "(f) has after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse."

It is very difficult to prove this thing and that would cause too much trouble. Adultery is also provided under clause 13. There should not be such provisions because they would go against our females, most probably, and there would be allegations. The result would be that there will be divorce and the females would have to suffer. Therefore, I humbly request that this sub-clause (f) under clause 10 should be deleted and that under clause 12 there should be a provision to avoid marriages between persons below the ages as provided in sub-clause (iii) of clause 5.

Mr. Chairman: The following are the selected amendments to clauses 9 to 12 of the Hindu Marriage Bill, which will be treated as having been moved subject to their being otherwise admissible:

Clause No. 10.—314, 49, 50, 238, 315, 316, 51, 32, 160, 318, 317, 161, 319, 320, 33, 91, 6, 54, 55, 140, 321, 141.

Clause No. 11.—7, 322, 239, 323, 8, 9.

Clause No. 12.—10, 324, 56, 240, 241, 93, 57, 325, 58, 327.

These are the amendments which will be deemed to have been moved. There are two other amendments from the Maharaja of Patna, Shri R. N. S. Deo, numbers 356 and 357. He has given intimation that he wants to move these amendments. But the difficulty is that these amendments were received late and they have not been circulated. The procedure is, if the Government are prepared to accept them, then certainly I can allow them, otherwise it will not be possible because other Members have not got notice of them.

Shri U. M. Trivedi: Where is the Government representative?

Shri N. Rachiah: There are other amendments.

Mr. Chairman: Hon. Members were asked that they should give intimation at the Table Office. I have read out those amendments about which intimation has been given. If the hon. Member wants me to include them now, all right, I will include them also. What are those amendments?

Shri N. Rachiah: 315, 319 and 327.

Mr. Chairman: Those numbers are already there.

Shri N. Rachiah: I beg to move:

In page 6, line 20, *for* "two years" *substitute* "three years".

Shri Sadhan Gupta: I beg to move:

In page 6, *for* lines 22 to 25, *substitute*:

> "(b) habitually treats the petitioner with cruelty; or".

Shrimati Renu Chakravartty: I beg to move:

In page 6,—

(i) in line 22, *omit* "such"

(ii) in lines 22, 23, 24 and 25, *omit* "as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party:".

Shri Bibhuti Mishra: I beg to move:

In page 6, *omit* lines 26 to 28.

Shri N. Rachiah: I beg to move:

In page 6, line 26, for "one year" *substitute* "two years".

Pandit D. N. Tiwary: I beg to move:

In page 6, line 26, *for* "one year" *substitute* "three years".

Shrimati Renu Chakravartty: I beg to move:

In page 6, line 28, *omit* "a virulent form of".

Shri Khardekar: I beg to move:

In page 6, *omit* lines 29 to 31.

Shri Venkataraman: I beg to move:

In page 6, line 29, *after* "has" *insert* "for a period of not less than one year".

Pandit D. N. Tiwary: I beg to move:

In page 6, line 29, *after* "has" *insert* "for a period of not less than three years".

Shri Venkataraman: I beg to move:

In page 6, line 29, *for* "before" *substitute* "preceding".

Shri N. Rachiah: I beg to move:

In page 6, line 33, *for* "two years" substitute "one year".

Pandit D. N. Tiwary: I beg to move:

In page 6, line 33, *for* "two years" *substitute* "three years".

Shri Khardekar: I beg to move:

In page 6, *omit* lines 35 and 36.

Shri Bogawat: I beg to move:

In page 6, *omit* lines 35 and 36.

Shri Rane: I beg to move:

In page 6, *for* lines 35 and 36, *substitute*:

"(f) on any other ground which is just and reasonable in the discretion of the court."

Shrimati Renu Chakravartty: I beg to move:

In page 6, *after* line 36, *add*:

"(g) has, without reasonable excuse, withdrawn from the society of the petitioner and the court is satisfied of the truth of the statements made in such petition and no legal grounds are present to deny granting of such application".

Shri Sadhan Gupta: I beg to move:

In page 6, *after* line 36, *add*:

"(g) has another spouse living and the petitioner had no knowledge of that fact within one year of the presentation of the petition or of the commencement of this Act whichever expires later."

Shri U. M. Trivedi: I beg to move:

In page 6, *after* line 36, *add*:

"(g) has changed his or her religion after the solemnization of the marriage:

Explanation.—Change of religion shall mean and include a change from Hinduism to any other religion or *vice versa*.

Shri N. C. Chatterjee: I beg to move:

In page 6, *after* line 36, *insert*:

"(g) has changed his or her religion and has embraced any other religion mentioned in Section 2 clause (1) sub-clause (c)."

Shri U. M. Trivedi: I beg to move:

In page 7, *after* line 3, *add*:

"Provided however that, if this separation has been decided on the

[Shri U. M. Trivedi]

ground specified in clause (g) of sub-section (1), the court shall order the offending party, if made, to pay to the wife two hundred rupees per month for her maintenance and fifty rupees per month for every child below the age of twentyone."

Shri Dabhi: I beg to move:

In page 7, lines 6 and 7, *omit* "on a petition presented by either party thereto".

Pandit D. N. Tiwary: I beg to move:

In page 7, lines 6 and 7, *omit* "on a petition presented by either party thereto".

Pandit Thakur Das Bhargava: I beg to move:

In page 7,—

(i) line 7, *after* "either party thereto" *insert* "or by any other person interested";

(ii) line 9, *after* "(i)" *insert* "(ii), (iii)"; and

(iii) *after* line 9, *add*:

"(2) All persons mentioned in section 6 or who are included in the definition of sapinda relationship as given in clause (f) or are included in the definition of degrees of prohibited relationship in clause (g) of section 3 shall be deemed to be persons interested for the purpose of section 11."

Shri N. C. Chatterjee: I beg to move:

In page 7, lines 8 and 9, *omit* "clauses (i), (iv) and (v) of".

Shri Rane: I beg to move:

(i) In page 7, line 9, *omit* "(i)".

(ii) In page 7, *after* line 9, *insert*:

(2) Notwithstanding the provisions of the Inidan Limitation Act (IX of 1908), no petition under section 11 of this Act, shall lie after two years from the date of the solemnization of marriage and the marriage not so declared null and void by a petition under section 11 shall be valid for all purposes notwithstanding the contravention of section 5 of this Act."

(iii) In pages 7 and 8, *for* clause 12, *substitute*:

"12. *Petition for dissolution of Marriage or Divorce.*—(1) A husband or wife, whether married before or after the commencement of this Act, may present a petition for dissolution of marriage or divorce on any of the following grounds:—

(a) that the respondent has been impotent and continues to be so at the time of petition; or

(b) that the respondent has been a lunatic or an idiot; or

(c) that the respondent has been suffering from leprosy and some other loathsome disease not contracted from the petitioner; or

(d) that the respondent has not been heard of as being alive for a period of three years by those persons who would have naturally heard of it, had the respondent been alive; or

(e) that the respondent has deserted the petitioner for a continuous period of two years; or

(f) that the respondent, if a husband has any other woman as a concubine or associates with women of bad repute and leads an infamous life; and if a wife is a concubine of any other man or leads a life of illicit or criminal intimacy with any other person openly or leads the life of a prostitute; or

(g) that the respondent has not resumed marital intercourse for a period of two years or up wards either after the solemnization of marriage or

after the passing of the decree for judicial separation; or

(h) that the respondent has failed to comply with a decree for the restitution of conjugal rights for a period of two years or upwards after the passing of the decree; or

(i) that the respondent has ceased to be a Hindu by conversion to another religion; or

(j) that it is not possible to lead in future, a happy married life with the respondent for any other just and sufficient cause or ground in the discretion of the court.

(2) A wife may also present a petition either for the dissolution of marriage or for divorce on the ground—

(i) that in the case of any marriage solemnized before the commencement of this Act, the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has since the solemnization of marriage, been guilty of cruelty, or

(iii) that the husband has neglected or has failed to provide for her maintenance after demand for a period of two years or above; or

(iv) that the husband has been sentenced to imprisonment for a period of four years or more if she is below the age of thirty-five years."

Pandit D. N. Tiwary: I beg to move:

In page 7, lines 10 and 11, *omit* "whether before or."

Shrimati Renu Chakravartty: I beg to move:

In page 7, line 12, *after* "may" *insert* "on a petition presented by either party".

Shri Bibhuti Mishra: I beg to move:

In page 7, line 16, *after* "proceeding" *insert*:

"to be certified by civil surgeon with oath in open court".

Pandit Thakur Das Bhargava: I beg to move:

In page 7, line 22, *after* "fraud" *insert* "or not obtained at all".

Shri Bogawat: I beg to move:

In page 7, *after* line 24, *add*:

"(c) that the marriage is in contravention of the condition specified in clause (iii) of section 5".

Shrimati Renu Chakravartty: I beg to move:

In page 7, line 29, *for* "one year" *substitute* "three years".

Pandit D. N. Tiwary: I beg to move:

In page 7, lines 10 and 11, *omit* lines 41 and 42.

Shri Sadhan Gupta: I beg to move:
In page 8, *after* line 3, *add*:

"(3) Notwithstanding anything contained in sub-section (2), if the petitioner has been prevented from presenting the petition within time by reason of any fraud or coercion exercised by the other party to the marriage or by some other person, the court may accept such petition if it is presented within one year of the date on which the fraud had been discovered or coercion had ceased."

Shri N. Rachiah: I beg to move:

In page, 7 line 42, *for* "one year" *substitute* "two years".

Mr. Chairman: All these amendments are now before the House. Shri M. S. Gurupadaswamy.

Shri U. M. Trivedi: May I make one suggestion. Those Members who have given notice of amendments will they get a chance or those who have not got any amendments?

Mr. Chairman: I am sure, from the number of speakers who are rising, everybody will get a chance.

Shri U. M. Trivedi: Not the question of chance. The question is, some Members have not given notice of any amendment. Will they get a, chance.

Mr. Chairman: They also have a right to speak.

Shri M. S. Gurupadaswamy: Sir, in the present set of clauses two aspects of the question are dealt with: one dealing with the restitution of conjugal rights and judicial separation and another dealing with void and voidable marriages.

With regard to the restitution of conjugal rights and judicial separation, I want to make a few remarks. I feel that in the existing circumstances, when our ideas of marriage have considerably changed, it is outmoded to have both the restitution of conjugal rights and judicial separation in the Bill.

My reasons are briefly these. In clause 9 dealing with restitution of conjugal rights we find that "when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the aplication should not be granted, may decree restitution of conjugal rights accordingly." The husband or the wife, normally, will withdraw from the society of each other when both of them cannot carry on well when both of them fail to love each other. The necessity for the restitution of conjugal rights will arise when there is violent disagreement between the wife and the husband and there is no love lost between the two.

Pandit Thakur Das Bhargava: In many cases it has happened that other people have restrained the wife from coming, and these are the usual cases that come up before the court.

Shri M. S. Gurupadaswamy: You know that those cases of restraint, to which Pandit Thakur Das Bhargava has just referred, are simply brought before the court, and the usual plea is that the parents of the girl do not allow the girl to go to her husband and that the court should intervene, should come to the rescue of the girl and there should be restitution of conjugal rights. In many cases in my experience I have found that this plea is rather made out. If the wife loves her husband and if the partners, both husband and wife, love each other, there is no exacuse or no reason for either of them to go apart. Further there is no necessity for the other provision, namely judicial separation.

Shri S. S. More: Why not?

Shri M. S. Gurupadaswamy: I am making out my case. You will see in clause 10 the grounds given for judicial separation. One of the grounds given is that if the party has grounds the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition there may be judicial separation. If there has been desertion for such a long time, can we expect that the parties would come again and live like husband and wife? I cannot understand this. Do you mean to say that after two years, if we grant judicial separation, there is a possibility of bringing them together and then this decree may be rescinded? I cannot understand this. When the husband and wife cannot pull on together for a period of two years, is there any possibility, any hope, of bringing them together again?

And then sub-clause (b) deals with cruelty. And the cruelty according to this sub-clause should be of such a nature "as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or

injurious for the petitioner to live with the other party". If that apprehension is there in the mind of the party, then is it possible to bring about a reconciliation between the two parties? Of course one may say that the quarrel between the husband and wife is temporary, there is always the possibility of reconciliation and we must give a period for reconciling their quarrels. But it is only when all the avenues of reconcilement between the husband and wife are exhausted that they normally go to court. And when it has come to that stage, do you expect still that there would be any possibility of reconciliation?

Shri S. S. More: There are so many cases.

Shri N. C. Chatterjee: It is the most lovable thing.

Shri S. S. More: The court brings about a proper sense.

Shri U. M. Trivedi: What talk is this?

Shri S. S. More: It is exchange of experience.

Shri U. M. Trivedi: Go outside.

Shri M. S. Gurupadaswamy: It is extremely rare.

[SHRI BARMAN *in the Chair.*]

There is a sub-clause dealing with venereal disease in a communicable form. Mr. Raghavachari pointed out that there should be a period. I am not bothered whether there should be a period for this or not. But I want to say that all these cases which have been brought under this clause 10 are good grounds for divorce. If there is desertion for two years, if there has been maltreatment or harassment.....

Shri Venkataraman: Desertion is not a ground for divorce.

Shri M. S. Gurupadaswamy: I am only saying that these should be grounds for divorce. And if there has been venereal disease in a communicable form, it should be a ground for divorce. Because, if there are such grounds, I say there is no possibility of bringing the parties together at any time.

Shri S. S. More: Why not?

Shri M. S. Gurupadaswamy: If that is possible, then the clause on divorce is not necessary at all. Then we should have only the clause on judicial separation and the clause on restitution of conjugal rights, and we will have to omit the clause on divorce. I am only saying that you can only have either the clause on judicial separation or the clause on divorce. We know that the husband or the wife goes to the law courts only in extreme circumstances when they have exhausted all avenues and at that stage the courts cannot play the role of a reconciler. I feel that this clause dealing with judicial separation is not necessary. I feel it is out-moded. These are grounds which should be grounds for divorce.

Under clause 13 you will see that if the decree of judicial separation is not rescinded, if the parties do not live together for a period of two years after the decree of judicial separation, or decree on restitution of conjugal rights, then they will be made grounds for divorce. We are now making the failure to bring the parties together either under clause 10 or clause 9. I fail to understand why it should be so. When once the parties fall out, they fall out and they do not come back normally. If they, however, want to come back, they may re-marry after divorce, but I fail to understand why this clause is found in this Bill.

Dealing with void and voidable marriages, I did not understand what Pandit Thakur Das Bhargava was saying.

Mr. Chairman: The hon. Member may be as short as possible as there are many amendments given notice of by other Members.

Shri U. M. Trivedi: I did not get the opportunity of speaking on my amendment last time also and it will be very difficult for us.

Shri K. K. Basu (Diamond Harbour): That was why they did not accept it.

Shri M. S. Gurupadaswamy: The marriages are void if there is contravention of one of the conditions specified in sub-clauses (i), (iv) and (v) of section 5,—Here the distinction between void and voidable marriages has been arbitrary to my mind. The authors of the Bill have taken out clause (ii) of section 5 and say that if there is contravention of clause (ii) of section 5, then the marriage will be voidable. I do not know what is the basis for this distinction. I can understand when we treat marriages as void if there is a contravention of the entire clauses or all the conditions specified in section 5. What does clause (ii) of section 5 say? It says that if the party is an idiot or a lunatic at the time of the marriage, then that marriage, according to section 12, is voidable. To my mind, idiocy or lunacy is as bad as bigamy or marrying within the degrees of prohibited relationship. All these things are the same to me, and any man of commonsense will agree with me that all these conditions should be treated alike. If there is contravention of any condition enumerated under section 5, then the marriage should be treated as null and void. I do not know why one condition has been separated from another. I feel that marriages should be declared void if any partner, either the husband or the wife, is found to be a lunatic or an idiot at the time of the marriage.

Finally, I say that it has to be redrafted in so far as sections 11 and 12 are concerned. So far as sections 9 and 10 are concerned, one should be deleted and the other should be retained.

Pandit D. N. Tiwary: My amendments are 322, 324 and 325.

क्लाज ११ में मैं ने एंमेन्डमेन्ट दिया हैं :

"On a petition presented by either party thereto"

इस को छोड़ दिया जाय ।

कान्डिशन्स आफ हिन्दू मैरेज में जो चीजें हिन्दू मैरेज के लिये जरूरी हैं वे यह हैं कि एक स्त्री के रहते दूसरी शादी नहीं होनी चाहिये, दूसरी बात आप ने क्लाज ५ के सब क्लाज ४ में यह दिया हैं कि :

"the parties are not within the degrees of prohibited relationship"

इस के बाद सब क्लाज ५ में यह रख दिया कि सपिन्डा रिलेशनशिप नहीं होनी चाहिये । तो ऐसी शादी तो आप ने मना कर दिया, लेकिन वह शादी रुक कैसे सकती हैं ? और कोर्ट के सामने कैसे आ सकती हैं ? जब स्त्री या पुरुष में से कोई दरख्वास्त दें तभी तो कोर्ट के सामने आ सकता हैं । जब कानून इस तरह का हैं तो जब कोई लड़का और लड़की शादी करेंगा तो आपस में मिल कर करेंगा, उन दोनों में से कोई भी कोर्ट के सामने लाने वाला नहीं हैं क्योंकि वह दोनों तो राय कर के ही शादी करते हैं । तो फिर कोर्ट के सामने केस कैसे जायेगा ? फल यही होगा कि अनैतिकता जारी रहेगी । यदि आप चाहते हैं कि ऐसी शादियां न हों, और अगर ऐसी शादियां हों भी तो उन का विच्छेद हो जावें, तो आप को दूसरों को भी अख्त्यार देना चाहिये कि वह दरख्वास्त दें सकें । यह कभी भी सम्भव नहीं हैं कि जो दोनों व्यक्ति मिल कर, कोल्यूजन कर के शादी करते हैं वह कोर्ट में जायें । ऐसी हालत में यदि उन के अभिभावक, उन के नजदीकी रिश्तेदार, उन के नजदीक रहने वाले पड़ोसी इस मामले को कोर्ट के सामने नहीं लावेंगे तो यह कुप्रथा जारी रहेगी। इसलिये यह जरूरी हैं कि यह वाक्य हटा दिया जाय, ताकि दूसरों को यह अधिकार हो कि वह दरख्वास्त दें कर ऐसे सम्बन्धों का विच्छेद करा सकें ।

दूसरा एमेंडमेंट जो मेरा हैं वह नं० ३२४। क्लाज १२ का हैं ।

In page 7, lines 10 and 11, *omit* "wheher before or".

मैं बहुत अदब के साथ ला मिनिस्टर साहब से कहना चाहता हूं कि इस एक्ट के पास होने के पहले की किसी शादी पर वह हाथ न डालें । अगर दंश किसी तरह से इस विधेयक को बर्दाश्त

आं कर लेता हैं तो भी यदि आप इस कानून के बनने के पहले की शादियों पर हाथ डालना चाहते हैं तो शायद वह इस को बर्दाश्त नहीं करेगा । आप को लोगों के लिये जो भी कायदे कानून हों वह बना दें, आप डाइवोर्स को और भी लिबरल बना दें, या दिन में शादी हो और रात में ही डाइवोर्स हो जाय, ऐसा कानून बना दें, हमें इस में कोई उज्र नहीं । लेकिन इस कानून के बनने के पहले की शादियों पर आप हाथ न डालिये क्योंकि इस के खिलाफ देश में अत्यधिक भावना हैं क्योंकि जो लोग पहले से शादी किये हुए हैं उन की भी आफत आ जायेगी और सम्पूर्ण परिवार विच्छेद की सम्भावना हो जायेगी । मेरा तीसरा अमेंडमेंट २२५ हैं । वह इस प्रकार हैं :—

In page 7, *omit* lines 41 and 42

लाइन ४१ और ४२ को हटा देने से वह धारा इस तरह पढ़ी जायगी :

> (ii) that proceedings have been instituted in the case of marriages solemnised after such commencement within one year from the date of the marriage;

इस कानून के बनने से पहले जितनी शादियां हो चुकी हैं, यह सेक्शन उनको कवर करता हैं । उन पर हाथ न उठाया जाय, इसलिए मैं ने यह अमेंडमेंट दिया हैं । इस बारे में मैं अधिक समय नहीं लेना चाहता हूं । मैं केवल यह कहना चाहता हूं कि ये तीनों अमेंडमेंट्स बहुत महत्वपूर्ण हैं, हालांकि मुझे ज्ञात हैं कि जिस तरह सब अमेंडमेंट्स अब तक थ्रो-आउट किया जा रहा हैं, उसी तरह यह भी थ्रो-आउट हो जायगा । लेकिन मैं कानून मंत्री, पाटस्कर साहब, को अपील करूंगा कि वह देखें कि क्या यह अमेंडमेंट जायज हैं या नहीं ।

मेरी पहली बात यह हैं कि एक स्त्री के रहते हुए दूसरी शादी न हो । दूसरी बात यह हैं कि अगर सपिंडा रिलेशनशिप में शादी हो जाय, तो उसका विच्छेद कैसे किया जाय ? क्या आप चाहते हैं कि अगर वे व्यक्ति आपस में मिल कर मैल से, काल्यूजन से उस सम्बन्ध को परफेक्चुएट करना चाहते हैं, तो उन्हें करने दिया जाय ? अगर आप नहीं चाहते और यह चाहते हैं कि यह कानून ठीक तरह से लागू हो, तो "आन ए पेटीशिन प्रेजेन्टेड बाई आइदर पार्टी टूं दैयरट्" हटा दिए जायें । मैं समझता हूं कि इससे कोई हानि नहीं होगी । ला मिनिस्टर साहब को इसे पढ़ना चाहिए और देखना चाहिए कि यह जरूरी हैं या नहीं । मेरी फाइनल अपील यह हैं कि कानून के बनने से पहले जितनी शादियां हो चुकी हैं, उन पर हाथ न उठाया जाय ।

Shri U. M. Trivedi: Sir, I have moved two amendments Nos. 140 and 141.

Shri S. S. More: There are some who have not given any amendments.

Mr. Chairman: They will get turns later.

Shri S. S. More: We do not like to overburden the list of amendments.

Shri U. M. Trivedi: In moving these amendments, I would like to draw the attention of the House to this unfortunate provision that this Bill starts with a curious definition of "Hindu". The application of the Act provides that it will apply to any person who is a Hindu by religion, in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana, or Arya Samaj. I can understand it. I also believe that a man belonging to the Jain or Sikh religion in a sense is also a Hindu. But now things are so cropping up that Jains and Sikhs and some of our Scheduled Caste friends who have adopted Buddhism have started saying that they are not Hindus. Some examples have been brought to my notice. For example among Jains there is one caste, called Agarwal caste who are also Hindus and they have got inter-marriages. If a Hindu girl is married to a Jain, the girl is not allowed to go to her temple. She is forced to observe the religion of the husband. The Jains who follow a religion which is a sort of a protestant religion from Hinduism will never

[Shri U. M. Trivedi]

give a daughter of their own to the same community among the Agarwals. So, slowly and certainly the Hindu religion is humiliated and a Hindu girl is always humiliated whenever she gets married into a Jain family.

Shri Pataskar: Are not both Hindus?

Shri U. M. Trivedi: You may say so. But Jains and Sikhs proclaim from house-tops that they are not Hindus. Now even Sikhs who inter-marry among their own castes, would never give their daughter in marriage to a Hindu. The Hindu will give his daughter in marriage to a Sikh. He does not differenciate between the communities; he is tolerant. But this daughter is not allowed to go to a temple and worship the Gods which her parents were worshipping. She will not be allowed to have the religious observances in which she was brought up. When these communities have made up their mind that they shall not be called Hindus, under these circumstances, let them be governed by the Hindu law; let them be governed by the divorce law. But my submission is that as soon as a Hindu girl is married to a Hindu, if that Hindu for certain reason or other changes his religion to Sikhism, the woman shall have the right to ask for judicial separation. Even if it be a change from Hinduism to Jainism, even if it be a change from Hinduism to Sikhism, it shall be a ground for the grant of judicial separation.

Mr. Chairman: How far will that be compatible with clause 2, application of the Act?

Shri U. M. Trivedi: That is why I have given an explanation—"Change of religion shall mean change of religion from Hinduism to any other religion or *vice versa*."

Shri S. S. More: Will this amendment be in order?

Shri U. M. Trivedi: Why should it not be in order? Go on, tell me the reason why it is not in order.

The main point of my contention is this. If change of religion to Muslim faith or to Christian faith can be a ground for divorce, the same should be a ground for granting a judicial separation. If that can be a ground for granting of judicial separation, I say that change of religion from one tenet, from one particular denomination to which a particular lady belongs, if her husband chooses to give up that religion to the detriment of the sentiments of that lady, she will have a right to ask for judicial separation. I go further and say that a man who treats a woman like chattel, who does not respect the sentiments of the wife with whom he is living, must be penalised. That is why I have moved a further amendment No. 141. Those who want to do this are never the small fry. Small people never do this. It is the rich, it is the capitalists who have got this tendency.

When Mrs. Renue Chakravartty was speaking she was saying that they have this curse of dowry—it is the capitalist people of Bengal who have got this system. It is not the poor villagers living on our side who have got it. We have no dowry and we do not believe in dowry. We have nothing to give by way of dowry. I, therefore, say that this provision of law which is being put down here is only for those who may dare to offend. We know of the case of a multi-millionaire of Delhi who has got so many wives: one a Jain, another a Hindu, a third a Christian and so on. Like Henry VIII he has got eight wives.

Shir S. S. More: An assembly of religions!

Shri U. M. Trivedi: And yet these women dare not ask for separation or divorce!

Shri S. S. More: Do they deserve separation?

Shri U. M. Trivedi: Supposing they do, will it be in their hands to apply for it. Therefore, my submission is that if the hon. Law Minister believes

that change of religion can be a ground for granting a divorce, then change of religion from Hinduism to Jainism or Sikhism should also be a ground for granting judicial separation. I have a few words to say on clause 11, and I will not take much of your time. I am at one with the condition laid down in clause 5(v) which says 'that the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two.' If such a marriage has been performed then it should not be declared void only on the application of one spouse that this marriage according to our conceptions would be a marriage which we could in another language call 'incest'. Incest in England is punishable with imprisonment extending to three years. We have unfortunately no such provision in the Indian Penal Code where incest can be punished. We are yet to provide for the punishment of incest. It is only on account of that that we have got here this prospective prohibition by law that such a marriage shall not be solemnized. If some people want to indulge in such incest and thus deprive other people of their rights to property by such methods which are offensive to the whole society, to the family and to the country, such marriages shall not be recognised. If they are not recognised the two of them shall not be allowed to say that theirs is a valid marriage because as long as this provision of law stands that marriage can be declared void only by a decree of nullity on a petition presented by either party thereof. My submission is that, where the petition is to be presented on the ground of clause 5, sub-clause (5), such a right must be given to anybody interested in the marriage—say, to the brothers or the relatives or anyone who can be in any way interested in such a marriage. I would say that it should be made an offence and punishment should be given to such people who indulge in such marriages

Several Hon. Members rose—

Mr. Chairman: Have they tabled any amendments?

Shri S. S. More: I have not tabled any amendments.

Mr. Chairman: Then let them have their say and then you can reply.

Shri Khardekar: Sir, I have moved my amendments 32 and 33. Being a real independent, I approve of what is good and condemn what I think is bad. I condemn clause 9 wholesale and I would like clause 11 to be revised and the amendment of Shri N. C. Chatterjee accepted.

The reason why I oppose and I want this clause 9 to be deleted is this. I do see that the object of this clause is the restitution of conjugal rights; it may be good but a good object should be secured by good means. We talk of ends and means and the philosophy of Gandhiji but this particular clause, I think, is a relic of barbarism. To say that this exists in certain other Acts is no justification whatsoever. Respect for human personality is a very necessary criterion of any civilized life. In dealing with the most delicate human relationship—personal matter—a certain amount of refinement is naturally expected. To say the least this particular clause is crude, uncouth, barbarous and vulgar. That Government and courts should be abettors in a form of legalised rape is something very shocking.....

Shri N. C. Chatterjee: I think the Minister has not followed it; kindly repeat it.

Shri Khardekar: I come to clause 10. A number of things are there; there are many drastic changes. A brutal bounder deserts his wife for two years. What is the poor girl to do? To wait for two years? How is she to live and so on? And she is to send an application or petition after two years probably from above. Then there is this lunacy. You make a person live with another person in whose case lunacy has been proved for two years. Let us be realistic. Is it possible to live

[Shri Khardekar]

for two years with a person who is proved to be a lunatic and then make an application? If it is proved that a certain person is a lunatic and if the other person does not want or thinks that his or her life is not safe, then that person should be given a right to apply straight away. Proper and reliable medical certificate or medical examination should be there.

Then the question of venereal disease It has been said and doctors tell us that it is curable and there are wonder medicines in this 20th century. We should get over certain superstitions. But the point is that X may get this bad disease although he is entirely innocent. I may drink a glass of water from anyone suffering from venereal disease. In certain cases it is possible if you wear somebody else's clothes you may get it. There is really nothing morally wrong if one gets a disease of this sort.

Then there is this sub-clause (f): 'after the solemnization of the marriage had sexual intercourse with any person other than his or her spouse. When we are legislating, we must remember for whom we are legislating. Are we legislating for saints or for average common people? If it is human to err and divine to forgive, it is sensible to overlook a few lapses. A single lapse here may condemn a man or woman for life. Even the Archbishop of Caterbury, Dr. Fisher, giving evidence recently before the Divorce Commission gave it as his opinion that adultery may be permitted once. If the Archbishop is going so far, we need not be much too harsh. Even one lapse may be considered serious if the circumstances be taken into consideration. Take the life of sailor. He goes about the world and is away from the home. We should not allow him to have a wife in every port. But a few lapses must be overlooked.

Take, for instance, our soldiers and officers who were in Kashmir. If they have to stay there for one or two years as a human being they are sometimes likely to be tempted or captivated. Kashmir roses are supposed to be beautiful. You cannot really condemn a man for life for a single lapse. My point is that enforced continence would lead to perversion, warped personality —it is a danger to society. When we legislate we legislate for ordinary common people and we must take into consideration human weaknesses and we should not legislate in too much hurry with moral fads.

Shri S. S. More: If all these are to be exhausted I will have no chance.

Mr. Chairman: Those who have tabled amendments will have the first chance.

Shri S. S. More: It has been said so many times that giving notice of an amendment is not a qualification to speak.

Shri U. M. Trivedi: Why not?

Shri S. S. More: I think my hon. friend Mr. Trivedi usurps the powers of the Chairman; he thinks he is super-Chairman. Many of us have not repeated our amendments. It should not be made a sin.

Mr. Chairman: It is not so. The Government Bill is there. Those who have got positive objection against certain provisions of the Bill have tabled amendments. Naturally, it is for the House to know what are their objections to the provisions of the Bill.

Shri S. S. More: I don't quarrel with this.

Mr. Chairman There may be others who may either support it or controvert it, I agree. But, is it not a fact that from those who have tabled the amendments the House expects to hear something against the provisions of the Bill? It may naturally be inferred that those who have not tabled amendments, so far as a Government Bill is concerned, accept it.

Shri S. S. More: I will not challenge it. I only say that some time may be reserved for others also.

Mr. Chairman: I shall do that; but, naturally, those who have tabled amendments are anxious to place their views before the House.

श्री विभूति मिश्र : सभापति महोदय, मेरी एक एमेंडमेंट क्लाज नम्बर १० में और एक एमेंडमेंट क्लाज नम्बर १२ में है । क्लाज नम्बर १० में जो मेरी एमेंडमेंट है वह इस तरह है :

In page 6, *omit* lines 26 to 28.

जो मेरी एमेंडमेंट क्लाज १२ पर है वह इस तरह से है :

In page 7, line 16, *after* "proceeding" *insert*:

"to be certified by civil surgeon with oath in open Court."

इस वक्त क्लाज नम्बर १० में यह प्रोविजन है कि अगर आदमी या औरत में से किसी को भी विरूलेंट फार्म आफ लैप्रोसी हो तो उन की मैरेज वायड करार दी जा सकती है, उन के आपस में सम्बन्ध टूट सकते हैं । मेरे विचार में यह बीमारी ऐसी नहीं है जो कि ठीक नहीं हो सकती । जो विशेषज्ञों की रायें हैं उन के मुताबिक अब ऐसी दवाइयां तैयार कर ली गई हैं जिन के इस्तेमाल से लैप्रोसी ठीक हो सकती है, जिन से कि इस बीमारी से छुटकारा पाया जा सकता है । आज कल साइंस का यहां तक आविष्कार हो गया है कि किसी भी बीमारी का अब इलाज किया जा सकता है । आज विज्ञान इतना बढ़ गया है कि अब यह इतनी भयंकर बीमारी नहीं समझी जाती । इस लिये मेरी प्रार्थना है कि इस बिना पर कि एक को लैप्रोसी हो गई है, मैरेज को वायड करार नहीं दिया जाना चाहिये ।

इसी सम्बन्ध में जो दूसरी बात मैं कहना चाहता हूं वह यह है कि यदि किसी स्त्री या पुरुष को बीमारी हो जाये और उस के बच्चे हों तो इसी बिना पर कि उस को बीमारी हो गई है, मैरेज को वायड कर दिया जाय, यह उचित बात नहीं होगी ।

जो दूसरी मैं ने एमेंडमेंट दी हैं उस के जरिये मैं यह चाहता हूं कि अगर कोई इम्पोटेंट हो तो केवल यह कह देने पर कि वह इम्पोटेंट है मैरेज वायड नहीं होनी चाहिये और इस बात को कि कोई इम्पोटेंट है एक सिविल सर्जन को एक खुली अदालत में कसम खा कर कहना चाहिये कि जिस को इम्पोटेंट बताया जा रहा है वह वाकई में इम्पोटेंट है । यह लफ्ज मैं इस लिये जोड़ना चाहता हूं कि इम्पोटेंट का चार्ज एक ऐसा चार्ज है जो कि किसी के खिलाफ भी लगाया जा सकता है । मैं ने देखा है और मेरा ख्याल है कि हमारे ला मिनिस्टर का भी यही एक्सपीरियेंस होगा कि जब कभी कोई बरात शादी के लिये देहातों में जाती है तो कई बार ऐसा होता है कि किसी की किसी के साथ दुश्मनी होती है और वह कह देता है कि लड़का तो इम्पोटेंट है और इसी बिना पर शादी नहीं हो पाती और बरात वापस आ जाती है । आप ने यह भी देखा होगा कि वकीलों के जो टाउट होते हैं वे आस पास के हर गांवों में रहते हैं १० १० मील तक वे चले जाते हैं और अपने लिये मुकदमे इक्ट्ठे करने के लिये वे उन लोगों को जिन की किसी के साथ दुश्मनी होती है बरगलाते हैं और कहते हैं कि तुम इम्पोटेंसी की बिना पर दावा कर दो और इस बात को प्रूव करने के लिये वे गवाह भी तैयार कर लेते हैं । इन कारणों से मैं ने कहा कि सिविल सर्जन को ओपन कोर्ट में आ कर शपथ लेकर कहना चाहिये कि फलां आदमी इम्पोटेंट है । मैं ने कोर्ट में आ कर शपथ लेने के शब्द इस लिये रखे हैं क्योंकि आज कल हम देखते हैं सिविल सर्जन भी बीस तीस रुपये ले लेते हैं और सर्टिफिकेट देते हैं कि फलां आदमी इम्पोटेंट है । इस लिये अगर उन को ओपन कोर्ट आ कर शपथ लेनी पड़ेगी तो शायद वे कुछ हद तक झूठ बोलने से भागेंगे । इस वास्ते इस किस्म की कोई प्रोवीजन की जानी चाहिये ।

मैं निवेदन करता हूं कि ला मिनिस्टर साहब यह जो दो एमेंडमेंटस मैं ने दी हैं उन को मंजूर कर लें ।

Shri Rane: Mr. Chairman, Sir, I have moved amendments Nos. 6, 8, 9 and 10. My amendment No. 6 is to clause 10

[Shri Rane]

which seeks to omit sub-clause (f) and to substitute for that sub-clause the provision that judicial separation can be obtained on any other ground which is just and reasonable in the discretion of the court. In my amendment No. 10 to clause 12, I have incorporated one ground, sub-clause (j) that a marriage can be dissolved or a divorce can be obtained if the court holds that it is not possible for the petitioner to lead in future a happy married life with the respondent for any other just and sufficient cause or ground.

My point is this. I admit that this is in favour of the woman. I like to be more liberal towards women. I want that judicial separation or divorce should be given on several additional grounds, that are absent or wanting in the present Bill. What I find in this Bill is....

Mr. Chairman: How can the wife or the husband file a petition claiming that if the court thinks it just and reasonable it may dissolve the marriage?

Shri Rane: I will speak about that later on.

Mr. Chairman: Your amendment itself is very indefinite and it says on any other ground which is just and reasonable to the court.

Shri N. C. Chatterjee: That will depend upon the discretion of the court and it will vary from court to court.

Shri Rane: Sir, I have picked up this language....

Mr. Chairman: It is also very uncertain.

Shri Rane: I have picked up this language from so many Acts of the Indian Legislature. If my hon. friend, Mr. Chatterjee, looks to the Specific Relief Act, he will find several provisions which vest the court with discretion and the very Act lays down that the discretion of the court cannot be arbitrary discretion but it must be a judicial discretion. I have no time and if you give me ample time I will speak on it at great length, but I presume, I shall not be given more time.

Mr. Chairman: Please go on.

Shri Rane: There are several instances which I have come across. I shall give one instance which has actually taken place. I have based my amendments on actual experience of the working of the Bombay Prevention of Bigamy Act and the Divorce Act. In my court there was a case about child marriage resulting later in a divorce suit.

An Hon. Member: In your court?

Shri Rane: In my district *(Interuption)*.

Mr. Chairman: Let the hon. Member go on.

Shri Rane: In my district there was a child marriage. After the marriage—the girl grew very strong and stout and the husband remained a pigmy.

An Hon. Member: After the marriage?

Shri Rane: Because it was a child marriage. The case came to the court for divorce and the court held that this is not a sufficient ground for divorce. I think no woman with a strong and sturdy constitution will be prepared to remain with a pigmy husband.

Shri V. G. Deshpande: Why not?

Shri Rane: I think it will shock one's conscience if the two are made to stand either in the House or the court and, therefore, such case should be given some consideration.

Dr. Suresh Chandra (Aurangabad): What is the trouble?

Shri Rane: I will give several instances *(Interruption)*, but I have no time.

Mr. Chairman: I think the hon. Member will go on.

Shri Rane: If my hon. friend looks to the Census Report of 1951, he will

find that there are 92 lakhs of cases of persons married between the ages of 5 and 14 in contravention of the provisions of Child Marriage Restraint Act—28 lakhs of boys and about 62 lakhs of girls have married between the ages 5 and 14 etc. The total number comes to 92 lakhs. We are making law for all. These cases must be covered. These are all facts. How to meet these cases? The merit of this sub-clause (j) of clause 12 is that it can meet any hard case that comes to the notice of the court.

5 P. M.

Dr. Suresh Chandra: What is the difficulty? We have not been able to understand.

Shri Rane: If my hon. friend reads clauses 12 and 13, he will find that the whole thing has been very stringent. We want to show that we have given the right of divorce to our ladies. By one hand we have given the right of divorce; by the other, we have taken it away.

Dr. Suresh Chandra: How?

Shri Rane: That is my view; you may not agree. These grounds that have been provided in clause 12 and 13 are very difficult to prove. Take the instance of adultery. Though there are cases of adultery. I have come across Hindu husbands who are very reluctant to tell even the pleaders that their wives have committed adultery. They take it as a matter of shame to say that; much less would they go to a court and say this or admit this. Therefore, I have moved this amendment to clause 12.

Shri B. N. Misra (Bilaspur—Durg—Raipur): The experience of other pleaders are to the contrary.

Mr. Chairman: The hon. Member may go on. Each may have his own experience.

Shri Rane: I do not know whether my hon. friend has got the other experience. I want to know from the hon. Member whether he has got any Act in his State for the prevention of bigamy or the Divorce Act. I am sure that there is none. He has not perhaps appeared in any case of this nature.

An Hon. Member: You are an expert.

Shri Rane: I have appeared in about hundred cases of divorce. You may call me an expert. But I have tabled all these amendments based on my actual experience in courts. You may laugh at it. I know there are many Members who will later on come to know that my amendment to clause 12—amendment No. 10—was a very wise amendment. I rely upon the future and I have given several grounds in all details in my amendment No. 10.

My amendment No. 10 to clause 12 seeks to combine clause 13 with clause 12. If my amendment is accepted, there will be no necessity for retaining clause 13. The language of clause 12 of the Bill, in my opinion, is very clumsy. I have read it and re-read it. There are so many if's and therefore I was unable to make any meaning for some time. I read and re-read and then I came to know the meaning of this clause. I want that the language of the present Hindu Marriage Bill should be very simple. It must not be left to the lawyers to interpret it in different ways. Let the Bill say what we mean in a simple language that a man-in-the-street can understand. My amendment has this merit that as soon as you read it, you can make the meaning out of it. My claim may perhaps be exaggerated. I humbly submit that the language of my amendment is very simple and even a man-in-the-street may make meaning out of it.

As regards the other matters, I wish to stress the importance of amendment No. 6 which seeks to liberalise the grounds for judicial separation. Amendment No. 8 relates to the question of void marriages. My amendment seeks to omit clause (i), that is, to omit the condition,

> "(i) neither party has a spouse living at the time of the marriage;"

[Shri Rane]

My object is that if a man marries another wife, it should not be declared void; it should be made punishable only.

My amendment to clause 11 says:

> "Notwithstanding the provisions of the Indian Limitation Act, no petition under section 11 of this Act, shall lie after two years from the date of the solemnisation of the marriage and the marriage not so declared null and void by a petition under section 11 shall be valid for all purposes notwithstanding the contravention of section 5 of this Act."

It is a question of limitation. I want that no marriage should be challenged on the ground that it is void after a specific period after the marriage has been solemnised.

With these observations, I commend my amendments to the acceptance of the House.

Shrimati Renu Chakravartty: In the first reading stage itself.....

Mr. Chairman: Will the hon. Member indicate the numbers of her amendments?

Shrimati Renu Chakravartty: I have many amendments: 49, 50, 51, 54 and 55.

As I said in the first reading stage of this Bill, I plead again with this House to delete or do away with clause 9 dealing with restitution of conjugal rights. I have already stated that I regard it as a barbarous clause. It may be that there are very good reasons for which the hon. Minister wants to retain it. One of these reasons is: suppose the father or the mother of the bridegroom or the bride prevents the daughter-in-law or the son-in-law from coming together, this may be used as a sort of a penal clause whereby restitution can be brought about. Here again, I think this is rather a barbaric way of trying to do it. It actually rebounds even upon the daughter-in-law herself. We have seen that if, in such circumstances, the daughter-in-law is to enter the house of her father-in-law, her fate is not a happy one. If the hon. Minister had substituted this clause by a clause for reconciliation, I would have welcomed it: a clause whereby the court would have the right to appoint a committee of reconciliation or a reconciliator. If we could have such a term, I would have liked that term more than the term 'arbitrator' as my hon. friend Shrimati Jayashri has put later on, in some other amendment. Because, arbitrator is a man who only judges rights and wrongs. But the way in which I would like the reconciliator to function is, even if a person has done a wrong, we should try not to judge, but to bring the two parties together. That is why I would recommend that this clause should be deleted. If the two parties cannot live together and they find it impossible and the court thinks that there is justification for what they say, and that the application should be granted in the opinion of the court, that should become a ground for judicial separation. That is why I have given amendment No. 54 wherein I have said, if any one party has withdrawn from the society of the other and the court is satisfied about the truth of the statements, a judicial separation should be granted. That is why I do hope that this restitution of conjugal rights will go and some sort of reconciliation machinery will take its place.

The other question on which I wish to focus the attention of the House is about void and voidable marriages. My hon. friend Shri N. C. Chatterjee said that he would want that idiocy and lunacy should be added as grounds for the voidability of marriages. Although I favour divorce, it might sound funny to some that I am all for reducing the number of void and voidable marriages. The reason for that is that the consequences of a decree of nullity are borne upon the children, and I do not, as I have said

earlier, want the children to suffer at all. That is why although we have given the children of void or voidable marriages the right of legitimacy within a limited sphere, I would rather that we should avoid children becoming children of void marriages as far as possible. That is why I am against allowing any extension of the grounds of voidable and void marriages, and I would rather bring those under the terms of the clauses granting divorce.

There is another point which I would like the House to consider. That is the question as to whether we want divorce or breaking up of a marriage by the intervention of third parties. We do not want the intervention of third parties. I am for divorce, I stand for it, only because I feel the two parties have not been able to come together. Therefore, I do not want a third party to interfere. It is here I would like the House to consider why when in the case of void marriages we have said that on a petition presented by either party to the marriage, it may be declared null and void, we have not said so in the case of voidable marriages. That is why by my amendment No. 56 I have again tried to include the words "on a petition presented by either party" after the word "may". That also should be included because I feel that we do not want the interference of third parties.

Coming to Clause 10 about judicial separation, there is the question of cruelty. In the joint Select Committee we have had a long discussion on this question. In the original Bill as you know, the words were "has treated the petitioner with cruelty." That was all that was there. A lot of discussion took place and we wanted—the majority of the Members wanted—that this clause on cruelty should not only mean physical cruelty but should also connote mental cruelty because in the opinion of almost all Members mental cruelty can often be very much more painful than physical cruelty. That is why I feel that it is better to leave that to the discretion of the court, and to leave the wording just as "has treated the petitioner with cruelty". Otherwise, we will be putting ourselves to a lot of difficulty leaving the whole matter open to interpret as to what is going to be a "reasonable apprehension" etc., and therefore I feel that it is better that we revert to the original wording "has treated the petitioner with cruelty".

Coming to the question of leprosy, we have again added here the words "a virulent form of". I am not a doctor, but I do say that even medical opinion says, and we have got the opinion of the Director-General of Health Services regarding the implications of leprosy on the dissolution of marriages—I do not want to quote from it very widely here, but he does say:

> "One of the fundamental principles for effective enforcement of prevention in leprosy, as in any other infectious disease, is to reduce the chances of infection. Consequently, if either of the married partners wants to live apart from the other who is suffering from leprosy or seeks divorce, it would not be in the interest of prevention of the disease to stop that person from doing so. If any one of the partners in marriage be unwilling to undergo health hazards of the type resulting from diseases like leprosy he or she should not be forced to run any risk of acquiring the painful and disabling malady."

There are other reasons which I shall go into when I deal with the clause on divorce, but I do feel that if one of the partners is suffering from leprosy, it should be a ground for divorce. There are many people who have suffered and the other partner has looked after them, but it is certainly a repulsive thing and we cannot force them to live together by law. It is certainly also a thing which takes time to be cured, and according to this opinion of the Director-General of Health Services it is a rather long drawn out process, a very costly process. Therefore, we should leave it as a clause for divorce? And whether it is

[Shrimati Renu Chakravartty]

a virulent form or not is something again left open to interpretation. Therefore, I say that only leprosy should be left as a ground for divorce.

The same thing about venereal disease. Many people have objected to its being included because it is a curable disease. Certainly it is a curable disease. 99·9 per cent of people will try and see that the other party does get cured because it is quite easy to cure it. But we ourselves know of many cases of very high-up people who, out of fear of social—I do not know what it is—stigma, may be, or that the thing should get out, often do not go for treatment. In such a case are you not going to give the right of judicial separation? Therefore, I do think that in these cases where, although they may be curable, there are grounds which are justified, I think it should be left as a ground.

One last point and that is on the question of clause 12. Where the consent has been obtained through fraud, after the fraud has been discovered there is only a period of one year given in the Bill within which a petition can be presented. Since we are legislating for a very big country, and a country where a large proportion of the people live out in the villages, not only is there the question of time, but the question of finance and the question of various other things and it is not possible to put in the petition by one year. I would urge that three years should be substituted for one year.

Not only is it a question of fraud and coercion and the question of consent. Our amendment No. 58 says:

> "Notwithstanding anything contained in sub-section (2), if the petitioner has been prevented from presenting the petition within time by reason of any fraud or coercion exercised by the other party to the marriage or by some other person, the court may accept such petition if it is presented within one year of the date on which the fraud had been discovered or coercion had ceased."

Here we want to say that this discretion should be left to the court. and even after the fraud or coercion has ceased, the court may accept such a petition.

These are the few amendments that I would like the House to consider.

Shri S. S. More *rose*—

Shri V. G. Deshpande: I have got an amendment.

Mr. Chairman: What is the number?

Shri V. G. Deshpande: 186.

Mr. Chairman: I shall call him later.

Shri S. S. More: Mr. Chairman, I will not repeat the grounds, but I would say that I am opposed to this clause 9. I need not give my grounds because so many other Members have given those grounds. But supposing the Government is determined to keep this clause 9, then, my question will be this. It has been stated:

> ".....and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree....."

What is meant by "legal ground"? There is no enumeration of any grounds on which such an application could be rejected, and I believe that unless you enumerate some grounds in the statute it will not be considered to be a legal ground.

Then regarding clause 11, my difficulty is that under this clause void marriages will remain there unless some petition is presented by either party. I support the proposal or the amendment suggested by Shri Dabhi and the proposal made by Pandit Thakur Das Bhargava that any other

person should be permitted to file a petition. But please read clause 11 with clause 16. If clause 11 is read with clause 16, then if a void marriage is declared a nullity, then, in that case, the children are given some protection and their legitimacy will be accepted. But supposing there is no such petition. The void marriage remains in operation, but because it is void and it is not set aside or declared a nullity, what is going to happen to the children? Because, clause 16 says:

> "Where a decree of nullity is granted in respect of any marriage under section 11 or section 12, any child begotten or conceived before the decree is made who would have been the legitimate child of...."

So, for the purpose of recognition of this legitimacy the declaration of the marriage's nullity is a condition precedent.

If the marriage is allowed to remain unannulled by the court, then at the time of succeeding to some property, these grounds may be taken up and it may be said that the marriage was void *ab initio*, and though it has not been set aside or declared null and void, children born of that mariage are illegitimate children not competent to have all the rights and privileges of legitimate children; therefore, this benefit under clause 16 will not accrue to the children. I would rather submit that Government should see their way that if a marriage is not declared to be null and void, then the children born of such a marriage should be declared to be legitmate children. Suppose a void marriage *ab initio* is not set aside by the efforts of any other party, say within a period of two years after it was celebrated, then after that the children born should be treated as legitimate; otherwise, if some party, after 15 or 30 years.....

Shri Pataskar: May I point out to the hon. Member that under the section as it stands, a petition can be made only by either of the party?

Shri S. S. More: Presented by either party. But suppose either party who entered into the wedlock, though void, decided not to get it set aside, what is going to happen?

Shri N. C. Chatterjee: May I draw the attention of the hon. Minister to this. Cannot a suit be filed under section 42 for a declaration of the marriage as void if there is non-compliance with the conditions prescribed in section 5? Will not the court declare the marriage void because of non-compliance, apart from section 11? A suit can be filed and declaration can be obtained.

Shri Pataskar: Section 11 is a shorter remedy provided. It may or may not be used.

Shri N. C. Chatterjee: I hope the hon. Minister agrees that this is not the exclusive remedy. Ordinarily a suit would lie in a civil court under section 42 of the Specific Relief Act.

Shri S. S. More: My proposition is this. Either party can get a marriage declared void. Besides either party, there are many relations, say, father and other persons whose property the children, the product of this wedlock may inherit, Now, unfortunately, that marriage is not set aside by the two parties concerned, because they are interested in keeping their present relationship. Now, what happens under clause 16? Clause 16 says that they shall be deemed to be legitimate children for a certain limited purpose. It may be so if the marriage of their parents is set aside or declared to be null and void. But there is a contingency, and there will be many cases, where the marriage, though void, remains as it is and unannulled by any decree of a court. Then, say, after 15 or 20 years the question of inheritance opens up somewhere. Now, what is going to happen to these children? That is my point. So there should be a certain period fixed, and if other relations also do not take proper steps, if permitted under

[Shri S. S. More]

clause 11 to set aside the marriage, then they should be stopped from challenging the legitimacy of the children; otherwise, it will be a sort of very unfair deal to the children concerned. So as far as clause 16 is concerned, it will have to be further amended by Government so as to put in some limit, that within such and such period it should be done. If it is not done, the children of that marriage should not be punished for the sins because they will be not in a position to see at the earliest moment that the marriage of their parents was void. This is my submission.

Shri Dhulekar: Clauses 11 and 16 are badly drafted.

Shri S. S. More: I have made my point sufficiently clear. Clause 16 will be only applicable to children, the marriage of whose parents is declared null and void.....

Shri N. C. Chatterjee: After nullification under this Act.

Shri S. S. More: Nullification of the marriage will be a condition precedent for their getting this status of legitimate children. But there will be many children, the marriage of whose parents is void—can be proved to be void—but no party has taken any steps to get it set aside. Take, for instance, contravention of the prohibited degrees. Then, say after 15 years or 20 years when 'X' is going to claim a particular property, the point may be raised that the marriage of 'X's parents was void and therefore 'X' is illegitimate. Being illegitimate, he cannot claim this particular property by inheritance. That is the point.

Mr. Chairman: It should be limited to a period. I think it is reasonable.

Shri S. S. More: If the relations do not take that step within that time, they must be stopped from challenging the legitimacy of the child. Therefore, this clause 11 will have to be amended. Instead of restricting the rights of presenting the petition to either party, make it as wide as possible so that everybody interested will have a chance to say something.

Shri Rane: My amendment No. 9 is to that effect.

Shri S. S. More: If that is so, it will be in Government's interest and in the interest of the future generation to accept that sort of amendment. If the right to sue is given and that right is not availed of, then that person should be stopped from challenging the legitimacy. This is the only point I am trying to make. I again thank you for giving me this opportunity, though I have not moved any amendment.

Shri V. G. Deshpande: I beg to move:

In page 7, line 9, *add* at the end "and the provisions of section 15".

Mr. Chairman: The hon. Member did not move it previously. Anyway, I will take it as moved.

Shri V. G. Deshpande: I may explain my amendment because it refers to clause 15 where I have given an amendment about the lawfulness of a marriage of a divorced person where it is said:

> "Provided further that it shall not be lawful for the parties who had committed adultery and which adultery was the ground on which the divorce was granted, to marry each other".

I want that a divorced person who wants to marry a person with whom he has committed adultery—where the court has given a decree that those persons were guilty of committing adultery—should not be allowed to do so. I want in the light of this amendment that the marriage of such persons who were convicted of adultery by a divorce court should be declared void. I do not want that they should be given a reward for having committed a crime. Suppose a plaintiff goes to the court and says that the other party has committed

adultery with some other person. Then, when he gets the divorce, and when the wife or the husband is released from this commitment, he or she should not be rewarded for committing that adultery, and I want such marriages to be made void. I am, of course, a reactionary man who believes in such reactionary notions.....

Shri S. S. More: Why make a confession?

Shri V. G. Deshpande: I have to admit.

Shri Satyendra Narayan Sinha: Does he want that persons guilty of adultery should not be allowed to marry again?

Shri N. C. Chatterjee: He should not marry the same person with whom he has committed adultery.

Shri V. G. Deshpande: If a judgment has been given that two persons are guilty of adultery, I want that if they want to come and marry, it should not be allowed.

Shri Khardekar: I agree with you.

Shri V. G. Deshpande: Thank you. Therefore, I want that in clause 11 this provision should be made.

Then I want to oppose the amendment moved by my hon. friend, Shri U. M. Trivedi. I regard Sikhs, Jains and all others over whom this Act has jurisdiction as Hindus. I feel that in regard to this provision of judicial separation, the hon. Law Minister with all his enthusiasm and zeal for a revolutionary measure, great reformist as he is.....

Shri Pataskar: There is nothing revolutionary here.

Shri V. G. Deshpande: I would humbly request him to accept the amendment No. 321 moved by Shri N. C. Chatterjee. It is a very reasonable amendment. Unless that amendment is accepted, it will mean great hardship, particularly to women. I know in Maharashtra of a famous instance, of Lakshmibai Tilak. Her husband embraced Christianity. The poor lady remained Hindu. I say that if he becomes a Mussalman or Christian or Parsee or Jew, and if the woman is an orthodox woman, a reactionary woman, does not that make a ground for separation? If he changes religion, judicial separation should be permitted.

In clause 9 you have provided for restitution of conjugal rights, on the analogy of a similar provision in the English law, because you think that it is a progressive thing. Suppose the man embraces Christianity or Islam, and the woman does not go to the divorce court to apply for divorce but lives apart from him, then under clause 9, the man can apply for restitution of conjugal rights. But I say that if the woman wants judicial separation because her husband has changed his religion, it is a very reasonable request and it should be allowed. And I hope that the hon. Minister with all his enthusiasm—I have the fullest confidence in his sense of justice and reasonableness—will accept this amendment.

I would also say that there is no need for any hurry in this matter. We have waited for thousands of years, and I submit that we can wait for a month or so more and consult good draftsmen like Shri Rane and others—I am speaking very seriously—and see that the errors in drafting which are there are completely removed. I suggest that we should meet in a committee for this purpose, for there are many provisions which need redrafting. I therefore submit that the drafting errors should be removed, and then the measure should be brought forward here after the necessary amendments.

Shri N. Rachiah: I support clause 9 dealing with restitution of conjugal rights. Many hon. Members have opposed this clause. And even some lady Members have opposed this clause at the time of the general discussion. But I feel this is a very important clause, and therefore, I sup-

[Shri N. Rachiah]

port it as drafted by the framers of this Bill.

I support clause 10 also, which deals with judicial separation. You know why this clause has been provided in this Bill. Our society, as it is, has been built according to the Manu *Dharama Shastra*, which has created greedy artificial barriers and divisions among Hindus. That has created not only thousands of castes and millions of untouchables, but it has also created so much of inequality between man and woman. ****Throughout our country, our sisters and mothers have been agitating for equal rights with men. It is because there is so much of inequality between man and women that they have been agitating for their rights, in order that they may live in peace and harmony with the men. From that point of view, I think this clause which Government have introduced for judicial separation is quite welcome.

With regard to the rights of women, we have already conceded them political rights and equality with men in the political field. Likewise, I think it is the duty of all who form the population of men in Indian society, to concede them the social rights also, as has been done in other countries. From this point of view also, I support clause 10.

Under clause 10, either party can approach the court for relief. One of the grounds on which judicial separation can be asked for is that the either party

> "has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition".

By my amendment, I want to increase this period to at least three years. A lot has been said already about the ill-treatment meted out to women and the way in which Indian women have been living with the men. But in spite of all this, the women have been living with the men. But now all of a sudden, there is a separation after her presenting the petition. This will be a very harsh treatment meted out to the men. So, I hope the Government will accept this amendment that instead of 2 years, it may be three years.

With regard to sub-clause (c), it has been stated in the Bill as follows:

> "(c) has, for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy;....."

The period stated is one year, but I say that the period should be two years.

Sub-clause (e) says:

> "has been continuously of unsound mind for a period of not less than two years immediately preceding the presentation of the petition;"

I say that instead of two years, the period should be one year. When a husband or wife becomes unsound mentally, he or she cannot be tolerated for more than one year. So, instead of two years ,it should be one year. When a man becomes unsound in mind, naturally he will become harmful and he will not treat his companion properly. Therefore, instead of two years, it may be provided as one year. With these observations, I want to support clause 10.

With regard to clauses 11 and 12, I want to support them as they are. According to clause 12, a marriage shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceeding; or

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud; or

(d) that the respondent was at the

****Expunged as ordered by the Chair.

time of the marriage pregnant by some person other than the petitioner.

These are very important conditions on which a marriage could be declared voidable. With these observations I want to support these clauses.

Mr. Chairman: I think I can call the hon. Minister to reply now.

Shri Dhulekar (Jhansi Distt.—South): I may be given a chance; I have caught your eye.

Mr. Chairman: So far as time is concerned, we have time up to 6 o'clock.

Shri N. C. Chatterjee: There are still 24 minutes left.

Shri Pataskar: So far as the question of time is concerned, I am prepared to accommodate hon. Members, because we have lost some time before. But if you want to finish these clauses today, I am prepared to reply.

Some Hon. Members: No.

Shrimati Renu Chakravartty: Why cannot we finish it now?

Shri N. C. Chatterjee: The Deputy-Speaker said that the hon. Minister would reply tomorrow.

Shrimati Renu Chakravartty: We can finish it today.

Mr. Chairman: What is the sense of the House?

Shrimati Renu Chakravartty: Last time also the same thing happened. Tomorrow there is an 'At Home' to be given by the Vice-President and most of the Members may not be present. Let us finish it today.

Mr. Chairman: The hon. Minister will now reply.

Shri Pataskar: We are now in the group of clauses 9, 10, 11 and 12. So far as clause 9 which relates to restitution of conjugal rights is concerned, no doubt in modern times, it sounds rather harsh to some ears as it is worded now. But as a matter of fact, my lawyer friends know that such a decree can only be enforced by attachment of property under the Civil Procedure Code—Order XXI, Rule 32. Therefore, so far as the women are concerned, there is no chance of such a decree being enforced otherwise. The only point is that in such cases, the remedy will be useful for some of the unfortunate women who are not prepared or who may not have got sufficient means to prove what they require for a judicial separation. So, under the clause as worded now, unless there is a legal bar, such decree would be passed.

If you turn to Rule 33 in Order XXI in the Civil Procedure Code, you will find that there is a special provision with respect to the enforcement of such a decree against the husband, because it says:

> "(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree against a husband for the restitution of conjugal rights or at any time afterwards, may order that the decree shall be executed in the manner provided in this rule.
>
> (2) Where the Court has made an order under sub-rule (1), it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments."

In the first place I would submit that restitution of conjugal rights is permitted not only to the Hindus, but to everyone. In the next place, the provisions in the Civil Procedure Code are such that no harm will be done to the women by the existence of this clause. On the other hand, in certain hard cases it may serve the purpose. A wife can have a decree for restitution of conjugal rights and also have some monthly payments made to her so that she may subsist in spite of the

[Shri Pataskar]

fact that her husband has discarded her So, I think that this provision will ultimately prove to be very useful for the women-class who, at the present moment, are in a position of handicap. Therefore, if we get rid of the sentiments, I do not think there is anything wrong or harmful in the provision as it stands. I hope this aspect of the matter will be taken into consideration by all Members who have suggested that this provision should be deleted.

Then, with respect to judicial separation, there has been only one point made in regard to leprosy. The clause says: "been suffering from a virulent form of leprosy". We know that leprosy is such a loathsome disease that even for no fault of the man who is suffering from that disease, even if we see him, we go a few steps aside and do not go near him. Under these conditions, it is not desirable that we should force either the wife or the husband to live with each other. It is from that point of view that probably this provision has been made there. Of course it is not as if that the wife or the husband, if any of them falls a victim to leprosy, must go to the court; if they choose from some other good motives, out of love, affection and other things, there is nothing to prevent it being done. But supposing that the leprosy is of such a nature that either the wife or the husband feels that it is unsafe to continue to live with the partner, there is no harm in providing for a short remedy by way of judicial separation in the case of a disease of this nature. I hope this aspect of the matter will also be duly taken into account by those persons who have made complaints about such a provision in this clause.

The next clause relates to void marriages. The clause reads as follows:

> "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Shri V. G. Deshpande: Have you got anything to say about the change of religion?

Shri Pataskar: I shall come to that. I beg hon. Members to bear patiently with me. I will not try to avoid anything. The time when heat was generated during the general discussion has gone now. We are thinking coolly now about the clauses. I find there is a group of hon. Members who think that these words, "may, on a petition presented by either party thereto" should be dropped. What would be the result? Supposing that marriage is void according to what is laid down in clause 5, do we really want that any third party should come into the picture? Of course they go to the court for deciding, if necessary, the prohibited degrees of relationship and all that kind of thing. But is it not desirable in the interests of society itself, that we allow the marriage to be declared null and void if a petition is presented by either party? If this clause is omitted, or rather, if these words "may, on a petition presented by either party thereto" are omitted it will mean that anybody who is on bad terms with the party may go to the court and the poor unfortunate people who had married would suffer. Certainly, if there is any lacuna according to section 5, it may be decided accordingly, but to go beyond that and allow any third party to wreck the life of those two people who are leading a married life is something which is dangerous and it is not justifiable in any circumstances.

Shri S. S. Mare: May I ask one clarification? Suppose I accept that argument, what will be the consequences of the void marriage?

Shri Pataskar: I will come to that. We are dealing with marriage. There are the husband and the wife. There might be some lacuna in that their

marriage may not be strictly valid. One of them may get the marriage declared void, but are we going to allow every other man in the street or some other person, out of whatever motives, to go and disturb the married life? Therefore, when the question is fully considered, you will find that these words should not be deleted. Hon. Members are very enthusiastic about its deletion but that is not the way to do it. I do not agree to the omission of these words from the clause.

Pandit D. N. Tiwary: May I ask one question?

Shri Pataskar: I am not going to yield. If this does not appeal to you, nothing that I can say further will appeal to you. I am convinced that in such cases, the ideal for us is not to wreck the marriages unnecessarily but to try and not to disturb the parties unless one of them feels that on account of certain difficulties, the marriage has to be declared void. That is the idea with which this provision has been made. If some hon. Members differ from me, I cannot help it.

Mr. Chairman: May I ask one point in this regard? I do not think that any third person should interfere, but should there not be a time-limit either for the husband or for the wife to avail of these clauses? Otherwise, they may live together for 10, 12 or 15 years and then suddenly one day, one of them or both of them may say that their issue is illegitimate. They know within two or three years of their marriage whether they are *sapindas* or not and whether they have contravened the provisions of any of these sub-clauses, (i), (iv) and (v) of clause 5. They know it. Why should they be allowed to continue indefinitely and suddenly, some years afterwards, why should one of them be allowed to declare the marriage illegal or void?

Shri Pataskar: I expect that normally speaking two people who have married are not likely to do anything of the kind, especially if there are any children out of the marriage, when we say that one of them should be allowed to declare the marriage to be void. They are not likely to do it. So far I am concerned, I think a third party should not be allowed to do it.

There was another point which Shri N. C. Chatterjee raised. It was with respect to one of the conditions specified in sub-clause (i), (iv) and (v) of clause 5. He very pertinently asked why "neither party is an idiot or a lunatic at the time of the marriage" should not be applicable here. He also referred to sub-clause (vi) of clause 5 where the bride has to get the consent of her guardian if she has not completed the age of eighteen years. Supposing there is a young girl who is married when she was a minor and the guardian's consent was not taken. We statutorily lay down that in the case of minors, the guardian's consent should be taken so that he will look to what is in the interests of the minors. But supposing unfortunately it is found that the guardian's consent was not there, or the guardian himself subsequently changes, in such cases, it is not desirable to allow them to get their marriage declared void on the mere technical ground that the guardian's consent is not obtained. I think even my friend did not have any serious objection to that being omitted.

The other point was raised with regard to the party being neither an idiot nor a lunatic. I think in clause 12 there is a provision so far as this matter is concerned. It is almost the same provision saying that either party may do it. I think in the case of such a marriage if the wife is a lunatic, then it should be voidable at the instance of the husband. If the husband is a lunatic, naturally it should be voidable at the instance of the wife. Therefore it has been put in that category where, under clause 12, we have provided for voidable marriages. It is not that the two points are not covered by any of these provisions. Therefore, looking to all these conditions, and the provisions contained in clauses 9, 10, 11 and 12, I say that more or less they are a *via media*

[Shri Pataskar]

between the extremes which have been advocated by one side and the points that have been advocated on the other side.

Shri Sinhasan Singh: The hon. Minister has not replied to the query and observations made by Shri S. S. More that if the marriage is not got declared void by either of the party, that marriage is being *ab initio* void, and so what will be the result of the offspring of that marriage?

Mr. Chairman: May I know from the hon. Minister whether he is concluding now or whether he wants more time?

Shri Pataskar: I will take five or ten minutes more.

Mr. Chairman: So, any pertinent questions may be asked tomorrow. We may now adjourn.

The Lok Sabha then adjourned till half past ten of the Clock on Wednesday, the 4th May, 1955.